

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1389

EMIL LUSTIG, ALIAS DR. EDWARD E. FISHER,
PETITIONER

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

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1 In United States District Court

Cr. 3829

THE UNITED STATES

vs.

EMIL LUSTIG, ALIAS DR. EDWARD E. FISCHER

Docket Entries

1946

Apr. 2—Indictment for making engraving, print and impressions of obligations of the United States, filed.

Apr. 2—Notice of Allocation of case to Camden, N. J. filed.

Apr. 4—Ordered Bench Warrant issue for each defendant (Madden).

Apr. 5—Emil Lustig—Plea—Not Guilty—ordered bail fixed at \$10,000 and ordered committed in default (Madden).

Apr. 5—Thomas Edward Reynolds—Plea—Not Guilty—ordered bail fixed at \$7,500 and ordered committed in default (Madden).

Apr. 9—Emil Lustig—Warrant for arrest, returned executed (Madden).

Apr. 9—Emil Lustig—Commitment to County Jail returned executed and filed.

Apr. 9—Thomas Edward Reynolds—Warrant for Arrest, returned executed and filed.

Apr. 9—Thomas Edward Reynolds—Commitment to County Jail returned executed and filed.

Apr. 24—Petition in Support of Motion to Suppress Evidence filed.

Apr. 26—Hearing of Notice to suppress Evidence—Motion denied (Madden).

Apr. 29—Trial moved before Hon. Thomas M. Madden, Judge and jury.

Apr. 29—On Motion of Grover Richman, Jr., Asst. U. S. Attorney Ordered Inds. 3829c and 3875c consolidated for purpose of trial.

Apr. 29—Motion by Mr. Auerbach for judgment of acquittal in favor of defendant Thomas Edward Reynolds—motion denied (Madden).

Apr. 29—Verdict—Emil Lustig—Count 1, Guilty—Count 2, Guilty—Count 3, Guilty.

Apr. 29—Verdict—Thomas Edward Reynolds—Count 1, Guilty—Count 2, Guilty—Count 3, Guilty. Mr. Richman moved for sentence of both defendants.

1946

Apr. 29—Sentence—Emil Lustig—5 years on the Indictment (Madden).

Apr. 29—Sentence—Thomas Edward Reynolds—1 year and 1 day on the Ind. (Madden).

Apr. 30—Emil Lustig—Judgment and Commitment, filed (Madden).

Apr. 30—Thomas Edward Reynolds—Judgment and Commitment, filed (Madden).

May 7—Emil Lustig—Notice of Appeal, filed.

May 8—Copy of Notice of Appeal sent together with Docket Entries to William P. Rowland, Clerk C. C. A. and Copy of Notice of Appeal to U. S. Atty.

2 May 16—Thomas Edward Reynolds—Judgment and Commitment returned executed.

June 4—Emil Lustig—Application for permission to enter upon Service of Sentence pending appeal, filed.

Emil Lustig—Order granting permission to appellant to enter upon service of Sentence Pending Appeal, filed (Madden).

June 13—Stipulation extending time to settle and file record on appeal to and including August 5th, 1946, filed (Madden).

July 1—Commitment returned executed, filed.

Aug. 2—Order of Designation, filed.

3 In the District Court of the United States for the District of New Jersey

No. 3829c—18 U. S. C. Sec. 264

UNITED STATES OF AMERICA

vs.

EMIL LUSTIG, ALIAS DR. EDWARD E. FISCHER AND THOMAS EDWARD REYNOLDS, ALIAS JOSEPH BINSTOCK

Indictment

Filed April 2, 1946

The Grand Jury duly impaneled on the 4th day of December in the year 1945 charges:

Count 1

That on or about the 10th day of March 1946, in the City of Camden and State and District of New Jersey and within the

jurisdiction of this Court, the said Emil Lustig, alias Dr. Edward E. Fischer and Thomas Edward Reynolds, alias Joseph Binstock, not under the authority or direction of the Secretary of the Treasury or other proper officer of the United States did unlawfully and feloniously print, make, and execute, cause to be printed, made, and executed, and aid in printing, making, and executing an engraving, print and impression in the likeness of a true and genuine obligation of the United States, and parts thereof, to wit: A Federal Reserve Bank note of the Federal Reserve Bank of Philadelphia, Pennsylvania, of the denomination and value of \$100.00, the face and back of which said obligation of the United States are of the following tenor and effect to wit:

4 100 Federal Reserve Note 100
THE UNITED STATES OF AMERICA

C00845384A 3
This note is legal tender for all debts Public and private, and is redeemable in lawful money at the United States Treasury, or at any Federal Reserve Bank.

3 (Portrait of Franklin) Thesaur Amer
Series of 1934 (Seal)
C ONE HUNDRED
The Federal Reserve Bank of Philadelphia, Pa. Septent Sigil
Series of 1934
Washington, D. C. B4 3
3 C00845384A W. A. Julian Henry Morgenthau, Jr.
Treasurer of the United States Secretary of the Treasury

WILL PAY TO THE BEARER ON DEMAND

100 100 ONE HUNDRED DOLLARS 100 100

100 THE UNITED STATES OF AMERICA 100
(Vignette of building)

INDEPENDENCE HALL

100 100
ONE HUNDRED DOLLARS

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count II

That on or about the 10th day of March in the year 1946, in the City of Camden and State and District of New Jersey and within the jurisdiction of this Court, the said Emil Lustig, alias Dr. Edward E. Fischer and Thomas Edward Reynolds, alias Joseph Binstock, not under the authority or direction of the Secretary of the Treasury or other proper officer of the United States did unlawfully and feloniously print, make, and execute, cause to be printed, made and executed, and aid in printing, making, 5 and executing an engraving, print, and impression in the likeness of a true and genuine obligation of the United States, and parts thereof, to wit: A Federal Reserve Bank note of the Federal Reserve Bank of Philadelphia, Pennsylvania, or a silver certificate of the United States, the exact identity of said note being to the Grand Jurors unknown, of the denomination and value of \$10.00, the back of which said obligation of the United States is of the following tenor and effect to wit:

TEN (10)

THE UNITED STATES OF AMERICA

TEN (10)

(Vignette of building)
U. S. Treasury

TEN (10)

U. S. TREASURY
TEN DOLLARS

TEN (10)

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count III

That on or about the 10th day of March in the year 1946, in the City of Camden and State and District of New Jersey and within the jurisdiction of this Court, the said Emil Lustig, alias Dr. Edward E. Fischer and Thomas Edward Reynolds, alias Joseph Binstock, did unlawfully and feloniously have in their control, custody, and possession the following:

1. An engraving, print, and impression of the face of a Federal Reserve Bank Note of the denomination and value of \$100.00, which said engraving, print, or impression is more particularly

set forth and described in Count I of this indictment and is made a part hereof.

6 2. An engraving, print, and impression of the back of a Federal Reserve Bank Note of the denomination and value of \$100.00, which said engraving, print, or impression is more particularly set forth and described in Count I of this indictment and is made a part hereof.

3. An engraving, print, and impression of the back of a Federal Reserve Bank Note or a Silver Certificate of the United States, the exact identity of said impression being to the Grand Jurors unknown, of the denomination and value of \$10.00, which said engraving, print, or impression is more particularly set forth and described in Count II of this indictment and is made of part hereof.

4. A wooden press.

5. A package of one hundred sheets of bond paper.

6. Four packages containing one hundred sheets each of bond paper.

With intent to use those things herein before particularly described, and to suffer the same to be used in forging and counterfeiting obligations of the United States and parts thereof; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

A true bill.

ROBERT S. WEIBLE, *Foreman.*

Edgar H. Rossbach,

EDGAR H. ROSSBACH,

United States Attorney.

[File endorsement omitted.]

7 In United States District Court

[Title omitted.]

Petition in support of motion to suppress evidence

Now come the defendants, Emil Lustig, alias Dr. Edward E. Fischer, and Thomas Edward Reynolds, alias Joseph Binstock, and state and allege as follows:

By indictment filed the 2nd day of April 1946, in the District of New Jersey, we were indicted for violating Title 18, Section 264 of the United States Code and the acts amendatory thereto and the regulations duly promulgated thereunder.

We interposed a plea of "not guilty" to the said charge.

On or about the 10th day of March 1946, Emil Lustig, and Thomas Edward Reynolds state that they were lawfully in the premises in their room in the Walt Whitman Hotel, located at Broadway and Cooper Streets in the City and County of Camden and State of New Jersey. That upon entering the premises about 6:30 P. M., Emil Lustig and Thomas Edward Reynolds were confronted by three men, one now known to them to be Norwood Green, an agent of the Treasury Department or the Secret Service Department of the United States Government. That the said Norwood Green and the other two men accompanying him questioned the defendants. It was later learned that the two men accompanying Norwood Green were detectives of the City of Camden, New Jersey. At about 7:00 P. M. of the same day, Emil Lustig and Thomas Edward Reynolds were placed under 8 arrest by the detectives of the City of Camden, and the Federal agent.

All of this was done without a search warrant. Our premises were seized and without a warrant. We demanded to see a warrant, and they had none. The said officers, without a warrant, seized the following: two boards, two bolts, some washers, some Pearson's creoline, some water colors, some paper blotters, a few small empty bottles, two metal pans, some brown business envelopes, and two wooden sticks, one square and one round, together with two packages of white paper.

The said agents had no right to enter our premises and make a search and place us under arrest without a warrant. We, therefore, claim that our rights were invaded in the seizure of the items aforementioned, and we ask and pray that such evidence if it is intended to be used against us, obtained without a lawful search warrant be suppressed, as our rights under the provisions of the 4th and 5th Amendments to the Constitution have clearly been violated, and we respectfully pray for the following relief:

That all such evidence be excluded upon the trial of the action and that this Honorable Court now makes its order to suppress.

Dated Camden, New Jersey, April 24th, 1946.

Emil Lustig,
EMIL LUSTIG,

Petitioner.

Thomas Edward Reynolds,
THOMAS EDWARD REYNOLDS,

Petitioner.

9 [Duly sworn to by Emil Lustig and Thomas Edward Reynolds; jurat omitted in printing.]

10 District Court of the United States, District of New Jersey

No. 3829c—Criminal Indictment in three counts for violation of
U. S. C., Title 18, Sec. 264

UNITED STATES

v.

EMIL LUSTIG

Judgment and commitment

Filed April 30, 1946

On this 29th day of April 1946, came the United States Attorney, and the defendant Emil Lustig appearing in proper person, and by counsel.

The defendant having been convicted on verdict of Guilty of the offense charged in the Indictment in the above-entitled cause, to wit: Making engraving, print, and impression of obligations of the United States and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Five Years on the Indictment.

It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) THOMAS M. MADDEN,
United States District Judge.

[File endorsement omitted.]

13

In United States District Court

Notice of appeal to

[Title omitted.]

Emil Lustig, now confined in the Camden County Jail, Camden, New Jersey. Represented by Carl Auerbach, Esq., having offices at 116 North 7th Street. Emil Lustig charged on two separate indictments with making engraving, print and impression of obligations of the United States, said indictment bearing the number 3829c; and making engraving, print and impression of obligations of the United States, said indictment bearing number 3875c. Was

convicted on April 29, 1946, and sentenced to a term of five years under the first indictment, and three years under the second indictment, to be served consecutively, and is now confined in the Camden County Jail at Camden, New Jersey.

1. The above-named appellant, hereby appeals to the United States Circuit Court of Appeals for the Circuit from the sentence above mentioned on the grounds set forth below.

Pursuant to Rule V. I hereby serve notice that I do not elect to enter upon the service of the sentence pending appeal

EMIL LUSTIG, *Appellant.*

Dated May 6, 1946.

GROUND OF APPEAL

1. The District Court in the trial of this cause refused to allow defense counsel to ask a Government witness questions with regard to the similitude of certain evidence produced by the Government to United States currency.

2. The District Court below refused to suppress certain evidence produced by the Government in the trial of this cause upon petition to suppress and objection to introduction in evidence timely made.

14 [Clerk's certificate to foregoing transcript omitted in printing.]

15 In United States District Court

Cr. 3875c

THE UNITED STATES

v.s.

EMIL LUSTIG, ALIAS DR. EDWARD E. FISCHER AND THOMAS EDWARD REYNOLDS, ALIAS JOSEPH BINSTOCK

Docket Entries

1946

Apr. 24—Indictment for having possession and control of print and impression of obligations of the United States, filed Apr. 23, 1946.
Apr. 24—Notice of Allocation of case to Camden, N. J., filed.
Apr. 26—Emil Lustig—Plea—Not guilty.
Apr. 26—Thomas Edward Reynolds—Plea—Not guilty.
Apr. 29—Trial moved before Hon. Thomas M. Madden, Judge, and jury.

1946

Apr. 29—On motion of Grover Richman, Jr., Asst. U. S. Atty. Ordered Inds. 3829c and 3875c consolidated for purposes of trial (Madden). Motion by Mr. Auerbach for judgment of acquittal in favor of defendant, Thomas Edward Reynolds—Motion Denied (Madden).

Apr. 29—Verdict—Emil Lustig—Count 1, Guilty—Count 2, Guilty.

Apr. 29—Verdict—Thomas Edward Reynolds—Count 1, Guilty—Count 2, Guilty—Mr. Richman moved for sentence of both defendants.

Apr. 29—Sentence—Emil Lustig—3 years on the Indictment, to run consecutively with the sentence imposed on Ind. 3829c (Madden).

Apr. 29—Sentence—Thomas Edward Reynolds—Imposition of sentence suspended and Probation for 5 years, said Probation to commence at the expiration of the sentence imposed on Ind. 3829c (Madden).

Apr. 30—Emil Lustig—Judgment and Commitment, filed (Madden).

Apr. 30—Thomas Edward Reynolds—Judgment, filed (Madden).

May 7—Emil Lustig—Notice of Appeal, filed (see Cr. 3829c).

May 8—Copy of Notice of Appeal together with Docket Entries sent to William P. Rowland, Clerk C. C. A. and Copy of Notice of Appeal sent to U. S. Atty.

June 4—Emil Lustig—Application for permission to enter upon Service of Sentence pending appeal, filed (see Cr. 3829c for paper).

Emil Lustig—Order granting permission to appellant to enter upon service of Sentence Pending Appeal, filed (Madden) (see Cr. 3829c for paper).

June 13—Stipulation extending time to settle and file record on Appeal to and including August 5th, 1946, filed (Madden) (see Cr. 3829c).

July 1—Commitment returned executed, filed.

Aug. 2—Order of Designation, filed (see Cr. 3829c).

10 EMIL LUSTIG, ALIAS DR. EDW. E. FISHER VS. UNITED STATES

16 In the District Court of the United States for the
District of New Jersey

No. 3875C—18 U. S. C. Sec. 264

UNITED STATES OF AMERICA

vs.

EMIL LUSTIG, ALIAS DR. EDWARD E. FISCHER AND THOMAS ED-
WARD REYNOLDS, ALIAS JOSEPH BINSTOCK

Indictment

Filed April 23, 1946

The Grand Jury duly impaneled on the 26th day of March in
the year 1946 charges:

Count I

That on or about the 10th day of March 1946, in the City of
Camden and State and District of New Jersey and within the ju-
risdiction of this Court, the said Emil Lustig, alias Dr. Edward
E. Fischer and Thomas Edward Reynolds, alias Joseph Binstock,
not under the authority of the Secretary of the Treasury or other
proper officer of the United States did unlawfully and feloniously
have in their possession and custody an obligation and security
made and executed in part after the similitude of an obligation
and security issued under the authority of the United States, to
wit: A Federal Reserve Bank note of the Federal Reserve Bank
of Philadelphia, Pennsylvania of the denomination and value of
\$100.00, the face and back of which said obligation of the United
States are of the following tenor and effect to wit:

17	100	Federal Reserve Note	100
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THE UNITED STATES OF AMERICA

This note is legal tender for all debts C00845384A 3
 Public and private, and is redeemable in lawful money at the United States Treasury, or at any Federal Reserve Bank.

3	Series of 1934	(Portrait of Franklin)	Thesaur Amer (Seal)
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3	The Federal Reserve Bank of Philadelphia, Pa.	ONE HUNDRED	Septent Sigil
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C	Series of 1934	Washington, D. C. B4	3
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3	C00845384A W. A. Julian Treasurer of the United States	Henry Morgenthau, Jr. Secretary of the Treasury	
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WILL PAY TO THE BEARER ON DEMAND

100	100	ONE HUNDRED DOLLARS	100	100
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100	THE UNITED STATES OF AMERICA	100
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(Vignette of building)
INDEPENDENCE HALL

100	ONE HUNDRED DOLLARS	100
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with the intent to use the same contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count II

That on or about the 10th day of March 1946, in the City of Camden and State and District of New Jersey and within the jurisdiction of this Court, the said Emil Lustig, alias Dr. Edward E. Fischer and Thomas Edward Reynolds, alias Joseph Binstock, not under the authority of the Secretary of the Treasury or other

18 proper officer of the United States did unlawfully and feloniously have in their possession and custody an obligation and security made and executed in part after the simili-

12 EMIL LUSTIG, ALIAS DR. EDW. E. FISHER VS. UNITED STATES

tude of an obligation and security issued under the authority of the United States, to wit: A Federal Reserve Bank note of the Federal Reserve Bank of Philadelphia, Pennsylvania or a silver certificate of the United States, the exact identity of said note being to the Grand Jurors unknown, of the denomination and value of \$10.00, the back of which said obligation of the United States is of the following tenor and effect to wit:

TEN (10) THE UNITED STATES OF AMERICA TEN (10)

(Vignette of building)
U. S. TREASURY

TEN (10) U. S. TREASURY TEN (10)
TEN DOLLARS

with the intent to use the same contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

A True Bill.

DENNIS J. FENTON, JR., *Foreman.*

EDGAR H. ROSSBACH,
United States Attorney.
[File endorsement omitted.]

19 District Court of the United States, District of New Jersey

No. 3875C—Criminal Indictment in two counts for violation of
U. S. C., Title 18, Secs. 264

UNITED STATES

v.

EMIL LUSTIG

Judgment and Commitment

On this 29th day of April 1946, came the United States Attorney, and the defendant Emil Lustig appearing in proper person, and by counsel.

The defendant having been convicted on verdict of Guilty of the offenses charged in the Indictment in the above-entitled cause, to wit: Having possession and control of print and impression of obligations of the United States and the defendant having been now asked whether he has anything to say why judgment should

not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Three years on the Indictment.

It is further ordered that said sentence run consecutively with the sentence imposed this day on said defendant in Indictment 3829.

It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) THOMAS M. MADDEN,
United States District Judge.

21 [Clerk's certificate to foregoing transcript omitted in printing.]

1 In United States District Court

[Title omitted.]

Reporter's transcript

Trial in the above matters was held before the Honorable Thomas M. Madden, Judge of the United States District Court and a Jury, at Camden, New Jersey, on April 29, 1946, at ten o'clock in the forenoon, daylight saving time.

Appearances: Grover C. Richman, Jr., Esq., for the Government. Carl Auerbach, Esq., for the Defendants.

(Mr. Richman opens the case for the Government.)

Case for the Government—(Captain) GUSTAVE KOERNER.

By Mr. RICHMAN:

Q. Now, Captain, you are a captain of Camden City detectives?

A. Yes, sir.

Q. You were in such position on March 10th of this year?

A. Yes, sir.

2 Q. Now, on that day, did you receive any information with respect to two individuals occupying room 402 at the Walt Whitman Hotel in Camden?

A. Yes, sir.

Q. As a result of information you received, what did you do?

A. As a result of information I received, I went to the Walt Whitman Hotel.

Q. Did anybody go with you?

A. By myself, I proceeded to the desk clerk and looked at the registry at the desk there. I saw the name of Doctor Fischer and a gentleman calling himself Binstock registered at Room 402. I was satisfied that Binstock's name refreshed my mind and I corroborated that with Sergeant Murphy. I obtained a warrant for failing to register in our criminal code we have in the city of Camden, being in our city over twenty-four hours. I then proceeded to the home of the clerk of the city police court, Edward Smith, and received a warrant from him for the arrest of Doctor Fischer and Binstock for violating our code.

Q. Now then, did you return to the hotel?

A. I returned to the hotel along with Sergeant Murphy, Detective Pfleiderer, and Detective Arthur.

Q. What time of day was that?

A. Four-thirty.

Q. Four-thirty in the afternoon?

A. Four-thirty.

Q. What happened when you go to the hotel?

A. Went to room 402 of the Walt Whitman Hotel. There was no one there.

3 Q. Did you go in the room?

A. Went to the room.

Q. Who went into the room with you?

A. Sergeant Murphy, detectives Pfleiderer, and Arthur.

Q. All right. What did you find in the room?

A. Searched the room. We found first—I found a tray that was in the bureau drawer.

Q. Now, I show you a tray. Is that the tray you found in the room?

A. That is right. That is the tray.

Q. Then, what did you find, Captain?

A. Searched in the room.

Q. Now, I show you a brief case. Did you discover this in the room?

A. That was in the room.

Q. Is that the first brief case that you discovered?

A. There was three there. There was another small one—two—this size and a large one.

Q. Now, is this another of the brief cases you discovered?

A. That looks a lot like it.

Q. Now, looking first at this light brown brief case, will you look it over and see what is in it, and tell me whether it had the same contents at the time you discovered it in the room?

A. These articles here were in this bag.

Mr. RICHMAN. I would like to have the trays marked for identification.

The COURT. They will be marked.

(First tray marked "G-1" for identification and wooden
4 trays marked "G-2" for identification.)

Q. Were these pliers found by you in the bag?

A. Yes.

Mr. RICHMAN. I offer them for identification.

The COURT. The pliers will be marked "G-3" for identification.

Q. This bond paper, was that found by you?

A. That was found.

Mr. RICHMAN. I offer this for identification.

The COURT. G-4 for identification.

Q. Did you find anything else in that brief case; the light one?

A. Not to my knowledge.

Q. Look over the contents of the dark brown brief case—

The COURT. Before we go into that. Are you going to have the light brown brief case marked for identification?

Mr. RICHMAN. Yes.

The COURT. The light brown brief case will be marked "G-5" for identification.

Q. Look over the contents of the dark brown brief case, and tell us whether it contains now what it contained when you discovered it in room 402?

A. That is right.

Q. What did you find?

A. In this brief case, there was trays, there was paper cut to actual size of United States currency.

A. Is that in there?

5 A. No; I am looking for it. That was marked for identification. That is with it.

Q. Now, this is the paper you found in that brief case?

A. Absolutely.

The COURT. We will describe that as a red manila envelope with paper.

Mr. RICHMAN. Containing bond paper.

The COURT. We will mark that "G-6" for identification.

Q. Now, Captain, did you discover a tray containing bottles and—

A. Brushes.

Q. (Continuing.) And brushes? Just a minute.

Mr. RICHMAN. Will you mark this for identification?

The COURT. A tray containing what?

Mr. RICHMAN. Containing various small bottles, brushes, eye brow tweezers and what appears to be castors wrapped in a cloth and a small piece of sponge.

The COURT. It will be marked "G-7" for identification.

Q. What else did you discover?

A. These papers at that particular time were wet.

Q. You are handing me a group of papers which are marked in ink "3/10/46," wet.

A. That is right. That belongs in this envelope.

Q. Did you find them in the brown envelope you are now handing me?

A. Yes.

6 Mr. RICHMAN. Will you mark this for identification. It is a group of papers in a brown container marked "3/10/46," wet.

The COURT. It will be marked "G-8" for identification.

Q. Now, you are handing me what appears to be a magnifying glass. Did you discover that in the dark brown brief case?

A. Yes, sir.

Mr. RICHMAN. I offer that for identification.

The COURT. It will be marked "G-9" for identification.

Q. What else, Captain?

A. There was also a folder that had some paper in it. I put it back in the folder.

Mr. RICHMAN. I offer this manila envelope containing various pieces of bond paper.

The COURT. It will be marked "G-10" for identification.

Q. Now, Captain, you are handing me a piece of what appears to be plate glass. Did you find that in the dark brown brief case?

A. Yes.

Mr. RICHMAN. I offer that for identification.

The COURT. 8 1/2 x 13. G-11 for identification.

Q. What else, Captain?

A. There was a large bag.

Q. Just confine yourself to this brief case for the time being. Did you discover this ruler in the brief case?

A. Yes.

7 Mr. RICHMAN. Mark this for identification.

The COURT. G-12 for identification.

The WITNESS. Also, this stick of wood came out of there.

Mr. RICHMAN. Mark for identification this stick of wood about three inches wide by fourteen inches long.

The COURT. 3 x 14. What depth is it?

Mr. RICHMAN. About an inch.

The COURT. It will be marked "G-13" for identification.

The WITNESS. Also, this ruler—this stick of wood with the cloth on it, and also this particular piece of cloth was found in there.

Mr. RICHMAN. You are handing me a stick of wood.

The COURT. A cylinder of wood about six and a half inches long which at that time had this piece of cloth wrapped around it.

The WITNESS. That is right, and it also had this piece with it; another piece of cloth.

Mr. RICHMAN. Offer them for identification.

The COURT. They will be marked "G-14" for identification.

Q. That manila envelope you have before you, you discovered that in this—

A. No; the contents of this bag came out of the large bag.

Q. Where was that bag?

8 A. That was in the same room with the same smaller bags.

Q. What did that bag contain; clothing?

A. Clothing.

Q. But the only articles except clothing that were found were these pieces of paper?

A. Yes.

Mr. RICHMAN. I will offer only the manila envelope.

The COURT. Just a minute, as I understand it, exhibits G-6 to G-14, all came out of this dark brown brief case.

Mr. RICHMAN. That is correct.

The COURT. Suppose we put the brief case in and mark it for identification "G-15."

Q. Now, Captain, as I understand it, this manila envelope containing printed slips of paper was found in the large suitcase which otherwise contained clothing, in room 402?

A. Yes.

Mr. RICHMAN. I offer that for identification.

The COURT. The manila envelope will be marked "G-16" for identification.

Q. Now, Captain, I show you what purports to be an impression of the face of a Federal Reserve note for \$100.00. Did you find that in room 402?

A. Yes, sir.

Q. Where?

A. In the bag.

Q. Which bag?

9 A. The small bag.

Q. You mean the dark brown bag?

A. The dark brown bag.

Q. That is G-15?

A. Yes.

Mr. RICHMAN. All right, sir. I offer this for identification.

The COURT. It was found where, Captain?

The WITNESS. In the dark brown brief case.

Mr. RICHMAN. And that is G-15 for identification?

The WITNESS. That is right.

The COURT. It will be marked "G-17" for identification.

Q. As to G-17, I notice some ink writing on it. Will you tell me whose writing it is?

A. Those are my initials and the time I put them on it.

Q. You put "GK" and 3/10/46?

A. That is right.

The COURT. "GK" standing for Gus Koerner and 3/10/46 standing for the date?

The WITNESS. Yes.

Q. Now, Captain, I show you what appears to be the reverse side of a \$100.00 Federal Reserve note and ask you if you saw that before?

A. I did, sir.

Q. Where did you find it?

A. In the same brief case in the Walt Whitman hotel,
10 room 402.

Q. That is the brown brief case, G-15?

A. Yes.

Q. Were these initials "GK" and the date "3/10/46" placed on there by you?

A. They were.

Mr. RICHMAN. I offer that for identification.

The COURT. It will be marked "G-18" for identification.

Q. Now, sir, I will show you what appears to be an impression of the reverse side of a \$10.00 certificate, and ask you if you ever saw that before?

A. Yes; I marked this at the same time. My initials and the date are on there.

Q. Where did you find that?

A. In the same brief case in room 402, Walt Whitman hotel.

Q. That was in the dark brown brief case?

A. Yes.

Mr. RICHMAN. I offer it for identification.

The COURT. It will be marked "G-19" for identification.

Q. After you discovered these articles, what did you do?

A. I called agent Greene, of the United States Secret Service.

Q. And did the defendants or either of them appear at room 402?

A. Later on.

Q. About what time?

A. Six o'clock.

11 Q. Were you there?

A. I was there along with Sergeant Murphy.

Q. Do you see the men who then appeared, in this courtroom?

A. Yes, sir.

Q. Point them out to me, and identify them if you know them?

A. Emil Lustig, the man with the gray suit and Reynolds, the man with the handkerchief to his face.

The COURT. You are pointing to the two gentlemen who are sitting at counsel table?

The WITNESS. Yes.

Q. What happened when they appeared?

A. When they appeared, they were placed under arrest. Sergeant Murphy and I were in room 402. I had placed detectives Arthur and Pfleiderer down in the lobby in the hotel to be pointed out who these gentlemen were. Agent Greene was in the room but had left approximately about ten minutes before the arrival of Lustig and Reynolds who came in the room with Pfleiderer and Arthur; Murphy and I were already in the room.

Q. Was there any conversation?

A. Arthur searched Reynolds and I searched Lustig. From Lustig's inside coat pocket—at that time, I was led to believe he was Doctor Fischer—I took an envelope with the name Emil Lustig on it, and I said, "Who is this?" and he said, "Me." He said that he was not Count Lustig but that he was the Count's brother.

12 Q. What other conversation was had?

A. Arthur searched Reynolds and he had nothing to do with it according to Lustig. He said that he was an innocent victim and that he had nothing to do with that.

Q. What did Lustig do that brought that about?

A. I asked him what his name was and he readily admitted he was Thomas Reynolds, of Albany, New York. Lustig said he had nothing to do with it.

Q. What did Lustig say he was doing, if he said anything?

A. Lustig said after that—I don't believe the bag is—There is two small bags.

Q. Let us go into that. Taking a look at this light brown bag which is marked "G-5" for identification, did anyone say that bag belonged to them?

A. Yes; Lustig claimed ownership of that bag.

Q. And everything that was in it?

A. That is right.

Q. Now, as to the dark brown bag, G-15?

A. Lustig claimed ownership of that bag and everything that was in it.

Q. Both bags?

A. Both bags.

Q. Did Reynolds claim the larger one?

A. The larger bag was claimed by Reynolds, also everything that was in it.

The COURT. What do you mean by "the larger bag"?

The WITNESS. There was a larger suitcase.

13 The COURT. The one the envelope of bond paper came out of?

The WITNESS. Yes.

The COURT. This manila envelope of bond paper, G-16?

The WITNESS. That is correct.

Q. What did Lustig say he was doing, if anything, with this material?

A. Lustig said they were not here to pass counterfeit money. They were here to sell the idea how to make it; make an easy living.

Q. Did you turn all this evidence you saw here this morning over to agent Greene, at that time?

A. Yes, sir.

Mr. RICHMAN. That is all. Cross-examine.

The COURT. Cross-examine, Mr. Auerbach.

Cross-examination by Mr. AUERBACH:

Q. Captain, were you on duty that Sunday?

A. I am on duty twenty-four hours a day.

Q. Were you on duty at Headquarters that day?

A. I was not at the Hall.

Q. Where were you?

A. At home.

Q. Who called you?

A. Detective Arthur.

Q. City Detective Arthur?

A. Yes; City Detective Clarence Arthur called me.

14 Q. What time did this call take place?

A. Two-thirty; around two-thirty in the afternoon.

Q. As a result of the telephone call from Detective Arthur, where did you go?

A. To my office Room 521 City Hall.

Q. What time did you get there?

A. I will say I just sat down to eat. I guess I got there around, maybe a quarter of three or three o'clock, something like that.

Q. Can you give us a fairly close time?

A. Well, I can't. I would not be telling you the truth if I told you the exact time. It was approximately around half past two or three o'clock.

Q. About two-forty-five, would you say?

A. In that neighborhood.

Q. That was the time you arrived?

A. Approximately the time.

Q. Well, approximately two-forty-five you arrived at the Detective Bureau?

A. Yes.

Q. When you arrived there, who was there?

A. When I arrived there, Detective Arthur was there and Detective Pfleiderer was there.

Q. Do you know how to spell Pfleiderer?

A. Yes, P-f-l-e-i-d-e-r-e-r.

Q. They were there along with—

A. Agent Norwood Greene, of the United States Secret Service.

15 Q. Now, what happened when you arrived at your office, Captain?

A. When I arrived at my office, Detective Arthur told me that Agent Greene wanted me. Agent Greene came in the office. He explained the case, and I am taking his words for it.

Q. I will ask you his words, Captain?

A. He explained the case that was described to me by the management or someone in an official capacity of the Walt Whitman hotel that at room 402 there was a suspicious person, and he gave me the name of Doctor Fischer and Binstock. He told me he had been over to room 404, which is next to 402, and that he had not seen anything, but his information led him to believe there was something going on in that room. I left Detectives Arthur and Pfleiderer there.

Q. Where?

A. In my office, Room 521, and I called Sergeant Murphy on the outside 'phone, and I asked him the name—if a man by the name of Binstock came to his mind as being a race horse man or a tout or a bookie, or something like that, and that was verified.

Q. About what time was that, Captain?

A. Oh, I will say like after three or so, arount, three-fifteen. The conversation lasted about a half hour, pro and con.

Q. Was Detective Sergeant Murphy on duty that day?

A. No.

Q. Where did you call him?

16 A. I called him at home.

Q. Then, what did you do?

I went to the Walt Whitman hotel.

Q. What time was that?

A. In the neighborhood of twenty minutes after three; twenty-five after three.

Q. You have testified that you went to the desk and you checked the registrations?

A. That is right.

Q. And then, what did you do?

A. I checked the registration and found Binstock and Doctor Fischer.

Q. You told us about that. Tell me what you did after you checked the registration?

A. I came back.

The COURT. You mean you found the names of Binstock and Doctor Fischer?

The WITNESS. That is right; those names on the registry list. I came back and went to the clerk of our police court, Ed Smith, and got a warrant for failure to register.

Q. What time was that?

A. A quarter of four; about a quarter of four.

Q. Was it a quarter of four by the time you had gotten the warrant or was it a quarter of four when you called for the warrant?

A. No; I called for the warrant around half past three or so.

17 Q. And about a quarter of four, you got the warrant?

A. Yes.

The COURT. When you speak of getting a warrant for failing to register, what do you mean?

The WITNESS. For failing to register in the criminal code. With that word, all criminals, they are demanded by an ordinance passed by our city, after twenty-four hours, they must register in our criminal outfit. They must come to our identification department and make themselves known, and register as criminals.

The COURT. Had you received information that either or both Binstock and Fischer had criminal records?

The WITNESS. Yes.

The COURT. On that basis, you received a warrant?

The WITNESS. Yes; absolutely.

The COURT. For violation of a city ordinance?

The WITNESS. Yes.

Q. What information did you have that Doctor Fischer was a known criminal?

A. None whatsoever.

Q. With regard to Binstock, you knew him as a former gambler and race track man?

A. Confidence man.

Q. You knew nothing whatever about Doctor Fischer?

A. No.

18 Q. But, nevertheless, you still swore out a warrant for violation of the criminal code?

A. Yes.

Q. This was about a quarter of four?

A. In that neighborhood.

Q. Where did you go after you got the warrant?

A. Along with the aforementioned detectives I went to room 402, in the Walt Whitman hotel.

Q. In other words, there were five of you?

A. No, four; Sergeant Murphy and I, Detectives Pfleiderer and Arthur. Agent Greene stayed in my office and didn't even go.

The COURT. Did Agent Greene ask you to get this warrant?

The WITNESS. No, sir.

The COURT. Did he go to the Walt Whitman?

The WITNESS. No.

Q. There is no question about that, is there, Captain?

A. No; the only information received from Agent Greene was as to the names. I verified that by going to the hotel myself.

Q. What time did you reach the hotel?

A. In the neighborhood of four o'clock.

Q. By the way, when you went to the hotel about three-twenty or three-twenty-five and checked this registration, did you ascertain whether or not Lustig and Reynolds were there?

A. Did I ascertain whether they were in the room; no, I did not.

19 Q. Did you ask?

A. No.

Q. You got to their room at four o'clock?

A. Yes.

Q. With Pfleiderer, Arthur, and Murphy?

A. In that neighborhood.

Q. Then, what did you do?

A. I went to room 402.

Q. Did you have a key?

A. Yes.

Q. Where did you get the key?

A. From down at the desk.

Q. You walked in?

A. That is right.

Q. Were either Mr. Lustig or Mr. Reynolds present when you walked in?

A. No.

Q. When you went in, what was the condition of the room?

A. Perfect.

Q. When you say "perfect," how do you mean?

A. The bed had been made. These two brief cases and hand bag were on the left side of the room, the room was in order.

Q. The personal belongings of the occupants, were they—could you see them?

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A. Could we see them?

The COURT. The clothes.

Q. The clothes—were they scattered about the room or were they hanging up?

20 A. In the closet, there was some clothes hanging there, if that is what you mean.

Q. Do you remember what clothes they were?

A. No; I can't say that—you mean for identification as to whether it was a suit of clothes or a shirt. I recall a suit of clothes but I don't recall the color.

Q. There was a suit of clothes in the closet?

A. Yes.

Q. In the drawer of the bureau, were there any socks or shirts or ties?

A. No, nothing.

Q. Nothing?

A. Only—one moment, only that tray, and that had some liquid in it. That was taken out of the top bureau drawer.

Q. And this—

The COURT. When you speak of that "tray," you mean the tray that is marked for identification "G-1"?

The WITNESS. I don't know what number it is.

The COURT. It was the first tray you gave us.

The WITNESS. That is it.

Q. Now, these wooden trays marked for identification "G-2," they weren't in the drawer?

A. No.

Q. Where were they?

A. In one of these handbags.

Q. Which one?

21 A. The brown one.

The COURT. Which brown one? They are both brown.

The WITNESS. I mean the dark brown.

Mr. AUERBACH. You mean the light brown one. I am not trying to confuse you, but my understanding is that identification G-2, these were found in the light brown brief case.

The WITNESS. This stuff was found in there.

Q. In this one, the light brown one?

A. Yes.

Q. That was in the brief case?

A. That is right.

Q. Who called Greene?

A. Sergeant Murphy called Greene.

Q. What time did he get there?

A. What time did Greene get there?

Q. Greene.

A. Greene came over in the neighborhood of five o'clock after we made a thorough search and found all this evidence I have presented.

Mr. AUERBACH. Now, Captain, don't offer anything. Just wait until my question is finished and answer my questions, if you will please.

Q. Now, Greene got there at five o'clock; is that right?

Mr. RICHMAN. The question is: How many times does he have to answer his question?

22 The COURT. All right, now, gentlemen.

Mr. AUERBACH. I am trying to get my thread back. I got a little unnecessary testimony, if your Honor please.

The COURT. You told the witness that Mr. Greene got there at five o'clock; is that right?

The WITNESS. About five o'clock.

Q. What time, if you recall, did Mr. Lustig and Mr. Reynolds arrive back at the hotel?

A. Half past six.

Q. Six-thirty?

A. In that neighborhood.

Q. From five to six-thirty, what did you do, Captain?

A. Waited for them to come home.

Q. Where did you wait?

A. In the room.

The COURT. In room 402, you mean?

The WITNESS. Yes, sir.

Q. Who waited there with you?

A. Sergeant Murphy, Agent Greene, Detective Arthur, and Detective Pfleiderer.

Q. Now, Captain, when you entered the room—

The COURT. Were all of those men in the room—

The WITNESS. At one time.

The COURT. What did you say?

The WITNESS. At one time.

23 The COURT. We are speaking now of the time you waited from five o'clock to six-thirty. Were all these people in that room?

The WITNESS. Not at all times. Do you want me to tell you why?

The COURT. No, no; you just answer the questions.

Mr. AUERBACH. I will withdraw that question.

Q. Mr. Binstock, whom you knew to be a race track confidence man; did you have any reason to believe he was a confirmed criminal or con man, or anything like that?

Mr. RICHMAN. That is objected to. That is not material.

The COURT. How is that material?

Mr. AUERBACH. I think it is material. Here we have a fellow that is being—

Mr. RICHMAN. I don't think we want any summation.

Mr. AUERBACH. I am not summing up.

The COURT. I will have to try to control that, Mr. Richman.

Mr. AUERBACH. Here we have a situation where a man is apparently guilty of failing to register—violating a criminal registration ordinance.

The COURT. We are not concerned with whether he is guilty of that or not.

Mr. AUERBACH. I am taking Captain Koerner's statement, their suspicion that that was so. He testified he knew nothing 24 about Fischer. I am trying to find out whether Mr. Binstock, as known by Captain Koerner, was such a criminal that we had a situation that would require the services of four detectives.

Mr. RICHMAN. That is argumentative.

The COURT. And it is immaterial. What difference does it make if he went there by himself and took an actual load of forceful criminals or if he took a hundred policemen and took some mean criminal that never acted up in his life? I don't see that it is material.

Mr. AUERBACH. It makes a difference, if your Honor please.

The COURT. I will sustain the objection, and allow you an exception.

Q. Was Detective Pfleiderer on duty that Sunday?

A. He was there. I can't recall whether he was on duty or not.

Q. When you went in the room, Captain, and you say that everything was all neat, perfect, I think was the word you used—

The COURT. The room was in order.

Mr. AUERBACH. He used the word "perfect."

The WITNESS. It was in order.

Q. Then, your attention was called to these various brief cases and suitcase?

A. That is right.

Q. You opened them to discover these various items you 25 produced in court?

A. Yes.

Q. They were all in the suitcase?

A. All except the tray which was in the drawer of the bureau.

Q. The items you marked as being wet, they were in the suitcases?

A. Yes.

Q. When Mr. Lustig and Mr. Reynolds came in, did you ask them to identify the suitcases?

A. In the presence of the rest of the men.

Q. Your answer is yes; isn't it?

A. Yes.

Q. Mr. Lustig, you say, identified both the light brown and the dark brown brief cases?

A. Yes, sir.

Q. I suggest to you, Captain, that he said that the light brown was his but that the small one wasn't his; is that so?

A. No; he identified both bags as his property, and Reynolds identified the large bag and said it was his property.

The COURT. When you say, "Reynolds identified the large bag," you mean the large bag which up to this time, has not been produced in court?

The WITNESS. That is right.

Q. It has also been testified that you searched Mr. Lustig?

A. I did.

Q. Did you find any money on Mr. Lustig?

A. Yes, sir.

26 Q. Do you remember what you found? The denomination of the bills, if any?

A. I remember there was some \$5.00 bills and some \$10.00 bills on Mr. Lustig, to the extent of about six hundred and some dollars.

Q. Then, Mr. Reynolds was searched by one of the detectives?

A. Reynolds was searched by Detective Arthur.

Q. Did you find a hundred dollar bill on Mr. Reynolds?

A. A brand new hundred dollar bill.

Q. You found a brand new hundred dollar bill?

A. Yes.

Q. Did you compare that \$100.00 bill with the impression?

A. I did not. That was turned over to Agent Greene.

Q. To your knowledge did Mr. Greene compare it?

A. I have no knowledge.

Q. You were not there?

A. If he compared it, I didn't notice it.

Q. What were you doing at the time?

Mr. RICHMAN. He says he doesn't know whether it was compared or not.

Q. Do you know whether he took a \$100.00 bill away from Mr. Reynolds?

A. Who?

Q. Mr. Greene?

A. No; Clarence Arthur took it away.

Q. To whom did Arthur turn it over?

A. To me.

Q. What did you do with it?

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27 A. I kept it in my possession until they were convicted of the criminal code. He turned over the money.

Q. The \$100.00 bill?

A. The \$100.00 bill.

Q. Didn't you just testify you turned the \$100.00 bill over to Mr. Greene?

A. Now, wait one minute. That is simply marked for identification, the \$100.00 that was turned over to Mr. Greene?

The COURT. No, no; Mr. Auerbach has been speaking of the \$100.00 that was found together with some one dollar bills on the person of Mr. Reynolds when Mr. Reynolds was searched. Is that right?

Mr. AUERBACH. That is right.

The COURT. Did you ever have them in your possession?

The WITNESS. I did.

The COURT. Did you ever turn them over to Mr. Greene?

The WITNESS. After the arrest, he was brought to my office but the money taken from Mr. Lustig and Mr. Reynolds were in my office, and the money was counted both at that particular time in front of them and brought to my office. Whether Mr. Greene examined them for counterfeit or not, I could not tell.

The COURT. Well, did you ever turn them over to Mr. Greene?

The WITNESS. No.

28 Q. When you got back to your office, Captain, were there any other Government men, Federal men, there, besides Mr. Greene, at your office?

A. No.

Q. I suggest to you, also, Captain that Mr. Lustig said that the dark brown bag belonged to a Mr. Weber. Did he say that?

A. No.

Q. Was there any talk about a third person being involved in this proposition?

The COURT. Any talk whatever of a third person in this proposition?

The WITNESS. At that particular time when he was placed under arrest, Lustig accused Reynolds of one of his friends ratting on him. He mentioned a man named—by the name of Stein. That particular night they had a drive for Palestine at the Walt Whitman hotel, and there was a party named Stein registered there. He was brought from the Walt Whitman later, and both of these men could not identify him as the man they done business with, I am sure, in Camden.

Mr. RICHMAN. You mean they would not identify him?

The WITNESS. That is right.

Q. They said they had done business with somebody in Camden?

A. No; that was the topic of conversation of how it came up.

29 Q. They mentioned a man named Weber?

A. Never.

Q. They never said that any of the stuff in these bags belonged to Weber?

A. No.

Q. No question about that?

A. None whatsoever.

Q. I suggest to you further, Captain, that when you went into the hotel the first time, you then went up to room 404 in an attempt to discover whether there was any proof of counterfeiting. Is that so?

A. No; not me.

Q. You didn't?

A. No.

Q. Did any of your detectives to your knowledge listen in at any keyholes in an attempt to get any information with regard to what these men were doing in the room?

A. You mean did my men go there or did I go to room 402?

The COURT. 404?

The WITNESS. And attempt to listen to a conversation of what was going on in room 402?

The COURT. Yes.

The WITNESS. No, sir.

The COURT. You mean not with your knowledge?

The WITNESS. No.

Q. What time did you get finished with this case on Sunday?

A. Sunday night.

30 Q. Yes; but what time?

A. I could not tell you.

The COURT. Approximately, Captain?

The WITNESS. We worked probably until half past eleven.

Q. At six-thirty they came in, within fifteen minutes or so they were arrested, and then taken to the Detective Bureau?

A. That is right.

Q. Now, that is approximately seven o'clock?

A. That is right; about that.

Q. From seven to eleven, were you concerned primarily with this particular case?

A. Yes.

Q. Give us some idea what you were doing?

A. Oh, fingerprinting, pictures, calling different bureaus, police departments to see if they had any escapees involved, for we had two men over here with records from Philadelphia and New York. It takes time.

Q. You asked them to make a statement?

A. Yes.

Q. Did they agree to make a statement?

A. No.

Q. Did they refuse?

A. Yes.

Q. Did Mr. Lustig make a statement to you that he was down here to show somebody how to operate this money machine?

A. Mr. Lustig at the time—

31 Q. No; did he or didn't he?

A. Yes.

Q. Did you ask Mr. Lustig whether he was down here making counterfeit money or to make counterfeit money?

A. Yes.

Q. What did he answer to that?

A. He said this: "We are here to make counterfeit money but we are not here to sell it. We are here to show them how to make an easy living."

Q. And did he say that the items which you brought here in court, which have been identified, were the items with which he was going to make counterfeit money?

A. He wasn't asked that question.

Q. Did he make that statement?

A. Yes.

Q. It is assumed these are the items he used?

A. That is right.

The COURT. We are not assuming anything.

Q. You did not have any previous experience with counterfeiters?

A. Oh, yes. You mean have I been on raids where the counterfeiters were arrested?

Q. Yes.

A. Yes.

Q. And where the equipment used for making of counterfeit money was seized?

A. Yes.

32 Q. Is it comparable to the items that have been introduced here?

Mr. RICHMAN. That is objected to. It is not material.

The COURT. How is that material?

Mr. AUERBACH. If your Honor please, I think I am entitled to establish if he knows whether these things made counterfeit money.

Mr. RICHMAN. He has not said they would.

The COURT. Has he?

Mr. AUERBACH. He said they were here for the purpose of making counterfeit money.

The COURT. As to that part of his testimony, he was merely quoting that. He did not adopt that statement as his own.

Mr. AUERBACH. I will withdraw the question and ask it another way.

Q. Do you know whether these items that are produced in court today would make counterfeit money?

Mr. RICHMAN. I object.

Mr. AUERBACH. I am asking him if he knows.

The COURT. I think that is proper.

Mr. RICHMAN. If he knows.

The WITNESS. What is the question?

The COURT. Did he help make it?

Mr. AUERBACH. Or assist in the preparation of it.

A. I have no experience making counterfeit money.

Q. I did not expect that you were going to take it up
33 as a career, Captain. Now —

The COURT. Captain, you understood the question. If you know, answer it; if you don't know, say you don't know.

(Witness shakes head yes.)

The COURT. You shook your head yes. Please don't do that. Your statements have to go into the record.

Q. Do you know it could be made by the use of this equipment?

A. Yes, sir.

Q. Will you tell the court how you would do it?

Mr. RICHMAN. I think we are going a little far afield now.

The COURT. I think it is proper.

A. They have a chemical solution.

Q. Do you know what the solution is?

A. I have no experience in it.

Q. How do you know it is a chemical solution?

The COURT. No, no; wait a minute. If you are going to ask him how, to tell you how to do it, leave him do it without interruption. Go ahead, Captain.

A. A chemical solution, and the \$100.00 bill, the \$1.00 bill or the \$10.00 bill is placed in the solution there, and that is good money, and there is a print taken off by placing it in the press with some blotters or paper and it is pressed down. Simple.

Q. And that is counterfeit money?

34 A. That is right.

Q. And that is all there is to it?

A. I could not tell you if that is all there is to it.

Q. You said you knew how to make it. Is that all there is to it?

The COURT. No, no; that is not the question. Do you know how you would try to make counterfeit money with this equipment? Wasn't that the question?

Mr. AUERBACH. I think so. I am trying to find out whether I am at the end of my story.

The COURT. The Captain is at the end of his story.

Q. And that is all there is to it?

A. Yes, sir.

Q. By the use of the processes you just outlined, this would be the result?

A. Yes.

Q. And that is counterfeit money?

The COURT. No, no.

Q. Is that counterfeit money?

Mr. RICHMAN. He is not qualified.

A. I am not positive.

Mr. RICHMAN. I object.

The COURT. The objection is well taken. I will allow it.

Q. If anybody were to present you with one of these bills, would you consider them to be United States currency?

Mr. RICHMAN. I object.

35 Mr. AUERBACH. I am asking his opinion.

The COURT. Objection sustained. They are not charged with passing.

Mr. AUERBACH. They are charged with making it, and, I think, we will—

The COURT. Making a reasonable facsimile, likeness, or similitude. It is up to the jury to decide whether it is a reasonable likeness.

Q. I ask you, Captain, whether these things are not the reverse prints of these—

Mr. RICHMAN. What difference does it make?

The COURT. That is the same line of questioning. The objection is sustained.

Mr. AUERBACH. That is all.

By Mr. RICHMAN:

Q. When you referred to this statement made to you by Mr. Lustig that he was going to show people how to make an easy living, was that made in connection with these items of miscellaneous character in the two brief cases?

A. Yes, sir.

Q. Did he say to you he was using these materials to show people how to make an easy living?

A. Yes, sir.

Mr. RICHMAN. That is all.

By the COURT:

Q. Captain, was that statement made in the presence of Mr. Reynolds?

36 A. It was made in the presence of Mr. Reynolds.

Q. And when Mr. Lustig identified certain of these articles as belonging to him, was that statement made in the presence of Mr. Reynolds?

A. Yes, sir.

Q. When Mr. Reynolds identified certain of these articles as his, was that statement made in the presence of Mr. Lustig?

A. Yes, sir.

Q. Did both of them or did either one in the presence of the other say how long they had been occupying that particular room, 402? Do you understand my question?

A. I understand the question but I could not answer it.

Q. You don't remember?

A. No; to be honest; no.

The COURT. All right, don't answer it. That is all.

By Mr. AUERBACH:

Q. Did they say, Captain, who they were teaching this money game to?

A. No.

Q. Didn't mention anybody's name? They didn't mention anybody's name, never mentioned anyone outside the name you gave us, but they said they were here to teach somebody the money racket?

A. That is right.

Mr. AUERBACH. That is all.

37 The COURT. We will recess for five minutes. You may step out ladies and gentlemen, for five minutes.

After recess HOWARD J. PRICE, sworn.

By Mr. RICHMAN:

Q. Mr. Price, where are you employed?

A. At the Walt Whitman hotel.

Q. What job do you have there?

A. I am office manager and room clerk.

Q. How long have you had that job?

A. Since July of 1942.

Q. During the early part of March, did you register into your hotel a Doctor Fischer and a Joseph Binstock?

A. I did.

Q. Do you see them here?

A. Yes; I do, sir.

Q. Would you point them out?

A. The two gentlemen who are with Mr. Auerbach.

Q. Do you know which is which?

A. Yes; I do.

Q. Which is the so-called Doctor Fischer?

The COURT. Mr. Price, will you keep your voice up so the last member in the jury box can hear you.

Which is Doctor Fischer?

A. Doctor Fischer is the gentleman next to Mr. Auerbach.

Q. And Mr. Binstock?

A. The gentleman to the right, at the end of the table.

Q. Did you make any official record of when they registered into your hotel?

A. That is right.

Q. Do you have it with you?

A. Yes; I do.

Q. Will you hand it to me?

(Witness complies.)

Mr. RICHMAN. May I have this marked for identification?

The COURT. It will be marked "G-20" for identification.

Q. I show you G-20 for identification and I ask you if you can further identify that?

A. That is a registration card from the hotel.

Q. Was that prepared in your presence?

A. Yes, sir; it was.

Q. Who wrote the writing on it?

A. Doctor Fischer.

Q. What did he write?

A. He wrote Doctor Ed. E. Fischer. He walked away from the desk, and I later called him back and I asked him if his reservation was for twin beds, and I asked him, "Is your wife joining you?" and he said, "No; another gentleman," and I said, "Will you add his name on the registration?" and he then wrote, "Joe Binstock."

Q. How about the address?

A. 215 East 86th Street, New York City.

Q. Who wrote that?

A. Doctor Fischer.

39 Q. I see some red pencil marks. Who wrote them?

A. They are my marks.

Q. They registered in according to your red pencil markings, on March 6, 1946?

A. That is right.

Q. What time?

A. At four minutes after four.

Q. In the afternoon?

A. That is right.

Q. To what room were they assigned?

A. Room 402.

Q. For how long did they remain in room 402?

A. From March 6 to March 10th.

Q. What time did they check out?

A. That I could not say. I was off duty.

Q. Is this record kept under your supervision?

A. Yes; kept in the auditor's office.

Q. Is it a regular official record of the Walt Whitman hotel?

A. Yes.

Q. Kept in the usual course of business?

A. That is right.

Mr. RICHMAN. I offer it in evidence.

Mr. AUERBACH. I have no objection.

The COURT. It will be received in evidence.

(Registration card received in evidence and marked "exhibit G-20.")

Mr. RICHMAN. That is all.

40 Cross-examination by Mr. AUERBACH:

Q. Mr. Price, you were on duty on the 6th of March, at four o'clock?

A. Yes, sir, I was.

Q. Is there anybody else in the hotel that does the same job as you do?

A. Yes; we have three or four others who are room clerks.

Q. Who are they?

A. Mr. Horner, Miss Evans, and Mr. Wagner, the night room clerk.

Q. Miss Evans, I assume, is a girl?

A. That is right.

Q. And the other gentleman's name?

A. Horner.

Q. He is a tall chap with gray hair?

A. Yes; heavy set.

Q. Taller than you?

A. Yes, he is, sir.

Q. But you, are you sure you took this reservation, this registration?

A. Definitely positive.

Mr. AUERBACH. That is all.

(Sergeant) THOMAS P. MURPHY, sworn.

By Mr. RICHMAN:

Q. Sergeant Murphy, you are Sergeant of Detectives of the Camden City Police?

A. Yes, sir.

41 Q. And for how long, sir?

A. Been in the Police Department eighteen years.

Q. Now, on March 10, 1946, did you accompany Captain Koerner to the Walt Whitman Hotel?

A. Yes, sir.

Q. Tell us what happened?

A. I received a call at home from Captain Koerner. He asked me to come into City Hall. I went in and he told me he had received information there was two men in room 402 in the Walt Whitman hotel, and that he suspected from information received that there was something wrong going on in there. So, we talked over what might be the hazards. He told me who they were. He said that one man was registered under the name of Emil A. Lustig—

The COURT. Registered under the name of Emil Lustig.

A. (Continuing.) Registered under the name of Doctor Edward Fischer, rather.

Q. And the other man?

A. The other man was registered under the name of Joseph Binstock.

Q. Did that name "Joseph Binstock" mean anything to you?

A. Why, I thought he had been a horse trainer, and I identified the name with race tracks over a period of years.

Q. Then, did you go with Captain Koerner to the Walt Whitman hotel?

A. I did.

Q. About what time of day was this?

42 A. We arrived at the hotel, I would say, about between four and four-thirty.

Q. Who else was with you?

A. Detectives Arthur and Pfleiderer, of our department.

Q. What did you do?

A. We got a pass key from the room clerk and went up to room 402, and went in the room.

The COURT. Previous to this time, Sergeant, had Captain Koerner secured the warrant he has spoken of?

The WITNESS. He had that when I went into the City Hall.

Q. You went to room 402?

A. Yes, sir.

Q. You and Captain Koerner were in the room?

A. Yes.

Q. Will you tell us what you found in the room?

A. Well, we checked over the drawer of the bureau, and so forth, and looked in the bathroom.

Q. Just what did you find, if anything?

A. Just the ordinary things that would be found there except in one of the drawers in the bureau, there was a pan.

Q. Is this the pan, G-1?

A. Yes, sir; that is it.

Q. Did you find two brief cases there? For instance, did you find this one marked "G-5"?

A. Yes, sir.

Q. Sergeant, turn around and face the jury. Did you find this exhibit G-2 in that brief case?

43 A. That was in the bag.

Q. What else was in there?

The COURT. If you can recall.

A. I believe this was in the bag with this.

Q. G-7?

A. Yes; that is right. That was in the bag with this, as I remember it.

Q. Now, G-6, do you recall where you found that?

A. That was in the dark bag.

The COURT. When you say dark bag, you are pointing to the dark brown brief case, G-15?

The WITNESS. That is right.

Q. Now, Sergeant, take a look at these three exhibits, G-17, G-18, and G-19. Where did you find them, if you did?

A. They were in the dark bag

Q. That is G-15?

A. Yes.

Mr. AUERBACH. May I see what the witness has in his hand?

The COURT. Exhibits G-17, G-18, and G-19.

Q. Now, Sergeant, if you will take a look at these exhibits here on this table, which range from G—

The COURT. G-2.

Q. (Continuing.) G-2 to G-19, in other words that is everything with the exception of the hotel registration sheet—

The COURT. And the pan.

Q. (Continuing.) And this pan. Will you tell us did you find these articles in either one or the other of these 44 brief cases, G-1 and G-15?

A. With one exception. There was one folder in a suitcase, in a large suitcase, and I think this is the folder.

Q. You are referring to G-10?

A. Yes.

Q. That was in a suitcase containing otherwise, clothes?

A. Clothes; that is right.

Q. Now, at the time you went into the room and made this search, were either of the defendants, Lustig or Reynolds, in the room?

A. No; they were out.

Q. Did you wait for them?

A. Yes, sir.

Q. Who waited with you?

A. Captain Koerner.

Q. How long did you wait?

A. We waited until about six-thirty p. m.

Q. At that time did the two defendants come to the room?

A. They did.

Q. Can you identify the men in the court room today who came to the door?

A. Well, Mr. Lustig with the pin stripe suit.

Q. Sitting in the middle?

A. Yes; and Mr. Reynolds on the end, with the black suit.

Q. What conversation took place when they arrived?

A. Lustig identified the two bags as being his.

Q. How about the material in each?

45 The COURT. When you speak of two bags, you mean two brief cases?

The WITNESS. He was asked a question of whether these two bags belonged to him, and he said that they did. Reynolds said further that the large suitcase belonged to him.

The COURT. Is that the suitcase that you saw the manila envelope of bond paper come out of?

The WITNESS. Yes.

Q. Did they identify themselves to you?

A. While they were being searched, all over again, Captain Koerner was searching Lustig. He pulled out an envelope with a name and address of Emil A. Lustig, Apartment 4B3, 251 West 97th Street, New York City, and Koerner said to him, "Is this you?" and he said, "Yes," he said, "That is me. I am a brother of the Count."

Q. Did Reynolds identify himself to you?

A. In this large suitcase, he identified as being his, there were papers in there with the name of Thomas Reynolds. I don't recall whether there was any address on them or not.

Q. Sergeant, you know Joseph Binstock, don't you?

A. I have seen him.

Q. Is Thomas Reynolds Joseph Binstock?

A. No, sir.

The COURT. Are either one of these men Joseph Binstock?

The WITNESS. No, sir.

Q. Was anything else said by anyone in the presence of these men?

46 A. Lustig said our racket is not passing counterfeit money. He said, "My racket is to sell people the idea how to make counterfeit money."

Q. Did he say anything about the material you had found in the room, in connection with that scheme?

A. He said everything belonged to him except these partly made notes.

Q. And those he didn't know anything about?

A. Didn't know anything about them. He never saw them before.

Mr. RICHMAN. That is all. Cross-examine.

Cross-examination by Mr. AUERBACH:

Q. He never did admit the three counterfeit notes?

A. He said he never saw them before.

Q. Did he say anything about a man named Weber?

A. Never mentioned that name.

Q. Did he say anything about teaching any particular person this racket and that is why he was here?

A. He didn't mention any particular name.

Q. Did you concern yourself, Sergeant, with trying to find any persons other than those you had arrested?

A. Yes. We had received information that another man registered in the hotel had been seen going into their room earlier that afternoon. So, the man registered in that room was a Doctor Stein, from Philadelphia. There was some sort of affair being held over there by some Palestine organization to raise 47 funds for the victims in Palestine, and Doctor Stein was one of the speakers. We contacted him, and after the meeting was over he came to the City Hall with an attorney, a local attorney, and we questioned him as to whether he had been in their room, and he said no he had not, that he had not been in anyone's room except his own and at the ballroom at the meeting. We brought him into the presence of these two men and asked them if they had ever known him or ever seen him before or if he had been in their room at any time, in the hotel, and they both said no.

Q. Then you left him go?

A. Yes.

Q. That was the full extent of your investigation about a third person?

A. That is right.

Q. You never heard any mention of a man named Weber?

A. Never heard of that name before.

Q. Did you tell Mr. Lustig that you had listened in at the door and you wanted to know where this third person was?

A. I did not; no, sir.

Q. Did Captain Koerner?

A. Not in my presence.

Q. Did anybody say anything?

A. Nobody said that in my presence.

Q. Not to your knowledge?

A. Not to my knowledge.

Q. You were not present when Captain Koerner or anyone else asked these men where the third person was?

A. That is correct.

48 Q. There is no question about that is there, Sergeant?

A. No question at all.

Q. What reason was there for you to question this Doctor Stein?

Mr. RICHMAN. I don't believe.

The COURT. He explained they received information that Doctor Stein had gone into the defendants' room.

Q. May I ask you the source of your information regarding Doctor Stein?

A. It was apparently one of the men received it in the hotel somewhere.

The COURT. Did you receive it?

The WITNESS. I did not.

Q. Now, this press, Sergeant, these two pieces of wood with the bills, that was in the brief case?

A. Yes, sir.

The COURT. Which brief case?

The WITNESS. This one.

The COURT. The large light one?

The WITNESS. That is right.

Q. When you went into the room, everything was in order?

A. Yes.

Q. All these things were packed away?

A. That is right.

Q. Including this facsimile of United States currency?

A. That is right.

Q. Were they wet or dry?

49 A. There was one package of paper in there.

Q. I am talking about these three items?

A. This particular item?

Q. Yes.

A. The pan that was in the drawer of the bureau was wet.

The COURT. No; he is speaking of the three impressions.

The WITNESS. Oh, they were dry.

Q. Which bag were they in?

A. The dark bag.

Q. And Mr. Lustig didn't say the dark-brown bag belonged to Mr. Weber.

A. He did not.

Q. He said it was his?

A. He said it belonged to him, that he was the owner of the both bags and this man owns the large suitcase.

Q. Was there any other piece of luggage in the room?

A. None whatever.

MR. AUERBACH. That is all.

THE COURT. In either of these brief cases that you discovered, were there any articles of clothing?

THE WITNESS. None at all.

THE COURT. The only things in them were what is here in court?

THE WITNESS. That is right.

THE COURT. That is all.

50 By Mr. RICHMAN:

Q. You did not find any shirts?

A. None at all.

Q. No pair of slippers?

A. None at all.

Q. Except what I produced here?

A. That is all.

Q. You did not pick these things up or anyone connected with the department did not pick these things up about the room and put them in the bag?

A. No, they were already in the bag.

Q. You didn't touch them other than to open it up to search them?

A. Yes.

Q. Was it open or locked?

A. What, the bags?

Q. The bags?

A. They were open.

THE COURT. By that you mean were they physically open or they weren't locked?

THE WITNESS. They were not locked.

MR. RICHMAN. That is all.

By the COURT:

Q. Sergeant, let us see if I understand you correctly. You went to the room with Captain Koerner?

A. That is right.

Q. Was Mr. Greene with you at that time?

A. No, sir.

51 Q. When did Mr. Greene come there?

A. After we searched the room, seeing what was in it, and finding the three notes, I talked to Captain Koerner and I told him we had enough to charge him with a Federal violation, and I called Mr. Greene from the hotel and explained to him over the telephone just about what we had found, and he came over later.

THE COURT. That is all.

By Mr. AUERBACH:

Q. Just one further question. When you reached the Detective Bureau as a result of Captain Koerner's call, Mr. Greene was there, wasn't he?

A. Yes, he was.

Q. And in the course of your conversation with Captain Koerner, did Mr. Greene take any part?

A. No.

Q. Did you talk to Mr. Greene?

A. I spoke to him when I came in.

Q. Did you talk to him about what might be found at the hotel?

A. No; I only talked to Captain Koerner in Captain Koerner's private office, and Mr. Greene was out in the large office talking to another man that was there.

Q. You knew he was a Federal agent?

A. Oh, positively. I have known him for a number of years.

Q. You did not accompany Captain Koerner when he first went over to check the registration?

A. I did not.

52 Q. When you went to the room with Captain Koerner, did you make any effort to find out whether Lustig and Reynolds were in?

A. Just simply pushed the key in the door.

Q. Didn't knock?

A. Oh, no.

Q. Just walked in?

A. Yes.

Q. Where was Mr. Greene while this was going on?

A. In the City Hall.

Q. Do you know what he was doing?

Mr. RICHMAN. How could he know that? He was at the Walt Whitman hotel.

Mr. AUERBACH. I am asking him.

The COURT. How would he know that? It is without the bounds of possibility for him to know that.

Q. Do you know what he was doing when you left?

A. As I remember it, he was sitting at a desk talking to a couple of other men. One man in particular he was talking to was Detective Ashenfelter, who was on duty.

The COURT. Do you know what they were talking about?

The WITNESS. I do not.

Q. Was anything said in your presence before you went over to the Walt Whitman hotel, or in the presence of Mr. Greene as to the suspicion of there being counterfeiters in the hotel?

53 A. Only as between Captain Koerner and I.

Q. What was that conversation?

A. He explained to me the information he had received. So, I talked to him and said, "Well, it doesn't seem possible for men in the counterfeiters' racket, counterfeiting money would be in a public hotel." I said, "That looks like as there was, and it is possible, that they might be trying to counterfeit race-track tickets." So, I told him that the only way out was for us to get into that room and find out what was in there; in their room.

Q. And Greene wasn't present?

A. No; the conversation was between Captain Koerner and I, and Mr. Greene was out in the large office.

Mr. AUERBACH. That is all.

HARLAN L. CLAPP, sworn.

By Mr. RICHMAN:

Q. Where are you employed, sir?

A. Bureau of Internal Revenue laboratory, Alcoholic Tax Unit.

Q. What is your job?

A. Chemist.

Q. How long have you been employed there?

A. Eighteen years.

Q. At the same kind of work?

A. Yes, sir.

Q. Now, sir, I am referring to exhibit G-7 —

51 Mr. RICHMAN. With your Honor's permission, as I take each of these bottles out, I will ask that they be marked "G-7a", for instance.

The COURT. That will assist us in keeping them in order.

Q. I show you first a bottle marked "82949" and ask you whether or not you have examined the contents of that bottle?

A. I have; yes, sir.

Mr. RICHMAN. Now, may that be marked "G-7a" for identification.

The COURT. It will be so marked.

Q. Will you tell us what the contents of that bottle were found by you, to be?

A. I found this to contain creosolic acid or crude creosol.

Q. Is creosolic acid a derivative of phenol?

A. It is a phenol derivative.

Q. It is a phenol derivative?

A. Yes.

Q. Now, I will show you bottle marked "82947" and ask you whether you examined the contents of that bottle?

A. I did.

Mr. RICHMAN. I ask this be marked for identification "G-7b."

The COURT. It will be so marked.

Q. What are the contents of that bottle?

A. The bottle contains phenol.

Mr. AUERBACH. Phenol?

The WITNESS. Yes.

Q. Now, I show you bottle marked "82951" and ask you
55 whether you examined the contents of that bottle?

A. I did.

Mr. RICHMAN. May that be marked "G-7c" for identification?
The COURT. It will be so marked.

Q. What did you find the contents of that bottle to be?

A. That is crude creosolic acid.

Mr. AUERBACH. I beg your pardon.

The WITNESS. Crude creosolic acid.

Q. I show you bottle marked "82946" and ask you if you examined the contents of that bottle?

A. I did.

Mr. RICHMAN. May that be marked "G-7d" for identification?
The COURT. It will be so marked.

Q. What are the contents here?

A. It had a few drops of phenol in it.

Q. I show you bottle marked "82950" and ask you whether or not you examined the contents of that bottle?

A. I did.

Mr. RICHMAN. May that be marked "G-7e" for identification?
The COURT. It will be so marked.

Q. What is G-7e?

A. That appears to be tap water.

Mr. AUERBACH. Tap water?

The WITNESS. Yes.

Q. I show you bottle marked "82948." Did you examine
56 the contents of that bottle?

A. I did.

Mr. RICHMAN. May that be marked "G-7f" for identification?
The COURT. It will be so marked.

Q. What are the contents of G-7f?

A. That is a solution of magnesium sulphate; Epsom salts.

Q. I show you bottle marked "82945" and ask you whether you examined the contents of that bottle?

A. I did.

Mr. RICHMAN. May that be marked "G-7g" for identification?
The COURT. It will be so marked.

Q. What are the contents of G-7g?

A. That contained a few drops of phenol.

Q. I show you bottle marked "82952." Did you examine the contents of that bottle?

A. I did.

Mr. RICHMAN. May that be marked "G-7h" for identification?
The COURT. It will be so marked.

Q. What are the contents of that bottle?

A. They contain urine.

Q. Contain what, sir?

A. Urine.

Q. Now, sir, I show you exhibit for identification marked "G-6," numbered 82953. Did you examine the contents of that manila envelope?

57 A. I did.

Q. What did you discover?

A. The papers were wet with a creosolic acid solution.

Q. All of them?

A. Yes.

Mr. AUERBACH. Are you through with the papers?

Mr. RICHMAN. Yes; I am through with them. I am finished with this witness with one more question.

Q. From whom did you receive all these bottles and that manila envelope?

A. I received these from Norwood G. Greene, Secret Service agent.

Mr. RICHMAN. That is all.

Cross-examination by Mr. AUERBACH:

Q. What is creosol, Mr. Clapp?

A. Diahydric phenol.

Q. What is it used for?

A. It is obtained from wood or wood tar and used as a preservative, frequently.

Q. You mean you buy it in stores?

A. Yes.

Q. Is it used as a disinfectant?

A. Yes.

The COURT. Isn't the correct name of phenol products, carbolic acid?

58 The WITNESS. Phenol is carbolic acid and is usually sold by that name.

Q. For instance, lysol is a disinfectant. Does that have creosol in it?

A. Yes; that is a creosol.

Q. Can you buy creosol in a drug store or a hardware store, or any place like that?

A. Yes, sir.

Q. Under what name? Under the name of creosol?

A. I presume so. I haven't tried to buy any. It is used commonly.

Q. What is crude creosylic acid?

A. It is crude creosol itself. This crude product contains some pyridin.

Q. How do you spell that?

A. Pyridin.

Q. What is pyridin? Is that the stuff used for headaches?

A. No.

Q. Can you buy this crude creosylic acid in any store?

A. Yes.

Q. Is it expensive?

A. No.

Q. Is it also a disinfectant?

A. Yes.

Q. How about phenol?

A. Phenol is ordinarily called carbolic acid.

Q. Is that expensive?

A. No.

Q. You can buy that in stores?

59 A. Yes.

Q. Without any trouble?

A. I don't believe so. Of course, it is a poison.

Q. I beg your pardon.

A. Unless they had some local restrictions, I believe you can buy it anywhere.

Q. Now, offhand, if you know how much would you say was the cost of all the items in all these various bottles?

Mr. RICHMAN. That is objected to. It doesn't make any difference.

The COURT. How is that material?

Mr. AUERBACH. Now, if your Honor please, there are some items that are brought up here that are not very expensive. What I am trying to establish is that this whole collection can be put together for probably two dollars. I am curious to know whether he knows this stuff is expensive and how much it is worth.

The COURT. So what? We come to the question—suppose you prove it is worth a dollar or you prove a hundred dollars. What difference does that make?

Mr. AUERBACH. The cost of going into the counterfeiting business for two dollars when it might cost two thousand dollars might make a difference as to whether or not these men were counterfeiting or doing something else.

60 The COURT. I cannot follow you.

Mr. AUERBACH. I will withdraw the question. That is all.

JOHN E. ERICKSON, sworn.

By Mr. RICHMAN:

Q. Mr. Erickson, what is your business?

A. I am employed by myself.

Q. What business do you operate?

A. The Camden Ink and Color Company.

The COURT. What is your answer?

The WITNESS. The Camden Ink and Color Company.

Q. How long have you been in that business?

A. I been in business since 1933, and I have always been in business since I was a kid.

Q. Are you a printer?

A. No; not a printer.

Q. What do you characterize yourself?

A. We manufacture ink for printers.

Q. You manufacture inks for printers?

A. For printers; yes.

Q. Is phenol used in the printing business?

A. We use a byproduct of phenol for cleaning ink, dry ink, hard ink.

Q. You mean you use it to suffuse the ink?

A. To dissolve it; yes.

Q. In your opinion, would an application of creosol put
61 to an ink writing suffuse that ink?

A. In a printing ink that had a pigment in it, it would;
yes, sir.

Q. It would suffuse it?

A. Yes.

Q. Would it render it capable of being transferred to another
piece of paper?

A. It can be transferred, like a decalcomania almost.

Mr. RICHMAN. That is all.

Cross-examination by Mr. AUERBACH:

Q. That is creosol?

A. That is creosol; yes, sir.

Q. What do you do with the phenol?

Mr. RICHMAN. The testimony is that creosol is a phenol derivative.

Mr. AUERBACH. I don't remember it that way.

Q. Creosol is a phenol derivative?

A. Yes.

Q. You testified to that?

A. Yes.

Q. Have you used it in making maps? Can it be used for making maps?

A. It can be used for making maps; it can be used for making transfers like a decalcomania. It would transfer almost like a decalcomania.

Q. Could that be done with creosol?

62 A. It could; yes, sir.

Q. Do you know how to do it?

A. Yes; you have to wet it; wet and dry it rough.

Q. I beg pardon.

A. You just wet it and put it on there. You could do it.

Q. You mean that you put creosol on a hundred dollar bill?

A. You get it good and wet and put pressure on it. All you have to do is put some creosol on a dollar bill and then this would happen. You have to put a lot of pressure on it.

Q. Would you use a gimmick like this?

The COURT. When you say gimmick do you mean one of the articles marked for identification?

Mr. AUERBACH. Yes.

Q. Would this do it?

A. I don't see what it is.

The COURT. It is two pieces of wood with two bolts, a bolt through each end, presumably, to which you apply pressure.

The WITNESS. That is right.

Q. That is all there is to it. That is to say, you put some creosol on a bill and put a piece of paper on top, and put it in there, and that is what you get?

The COURT. He didn't say that. He didn't say sticking was enough. He said you had to apply pressure.

Q. All you have to do is stick a hundred bill—

A. A hundred dollar bill or a one dollar bill.

63 Q. We are talking about a hundred dollars. We might as well talk big money. You stick a hundred dollar bill in here, put a piece of paper on it—any kind of paper. Would it make any difference?

A. I don't think so, not any kind of paper. You could probably use any kind of paper if you wanted to.

Q. Any kind of paper, put it in a contrivance like this, and put some pressure on it?

A. Yes; it is practically the same principle that a bank note printer uses when they make bank notes. You have to put something soft in there for the pressure between the paper.

Q. That is all you have to do?

A. To protect the ink. Don't you get that?

Q. When that impression comes off the hundred dollar bill, it is in reverse?

A. It is the reverse of the way it was on the bill, sure.

Q. Now, if you take creosote and you were to put the piece of paper and a blotter back in the machine, would you say that is good?

A. You get the original again.

Q. In the court of this production, do you lose anything? Does the dye come out?

A. You probably lose some of your color.

Q. You lose some of the color of the first take out?

A. On the first attempt, you ought to get a pretty good impression; if you transfer again, you get the original and 64 you get a lighter color.

Q. Would you say—I am showing the witness G-18—would you say this is a good one?

A. I don't know what Mr. Auerbach means.

Q. I said a good impression.

Mr. RICHMAN. I object. He is not qualified to say whether it is a good impression.

Mr. AUERBACH. If your Honor please, he has testified as to the fact after the first impression you get a pretty good reaction on color.

The COURT. He testified to that on cross-examination.

Mr. AUERBACH. Yes.

The COURT. But not on direct.

Q. Is that a good impression?

Mr. RICHMAN. He was not questioned in that regard on direct. It is not proper cross-examination.

The COURT. I will sustain the objection.

Mr. AUERBACH. Your Honor will allow me an exception.

The COURT. Certainly.

Q. Now, you are sure, Mr. Erickson, that by putting some creosote on a bill and then putting a piece of paper over it, black paper, and then putting it in that press that you can make an impression like a decalcomania I think you said? You are sure about that?

A. Yes, sir. You can break the color down; yes, sir.

65 Q. You can take off on the blank piece of paper the impression of the bill?

A. You can take off just what you got there, on that order.

Q. How long would it take?

Mr. RICHMAN. How is that material?

The COURT. He has testified that it could be done. It is proper cross-examination.

Q. How long would it take to make this impression?

A. I don't know. I never tried it. I know you can break things down with alcohol. We test them that way too. We do that to see how they stand up.

Q. You testified it can be done. Can you tell me how long it would approximately take?

A. No; I never tried it, never tried it on money or things like that. The only way we have tested it is with dry ink. You can take dry ink and stick it down and lift it up, but it can be done.

Q. It can be done?

A. It probably could.

Q. Now, you say probably, before you said it could be done. Can it be done?

A. Yes; it can be done.

Q. But you haven't any idea how long it would take?

A. No.

Q. Do you have any idea how much creosote you would have to put on a bill?

A. It would have to be pretty well soaked up on the machine.

Mr. AUERBACH. That is all, Mr. Erickson.

66 NORWOOD G. GREENE, called.

The COURT. Can we conclude with this witness by the noon recess?

Mr. RICHMAN. Is your Honor contemplating a twelve-thirty adjournment.

The COURT. Yes.

Mr. RICHMAN. I have another witness. I think Mr. Green will take past twelve-thirty.

The COURT. Suppose we recess at this time, ladies and gentlemen, and try to get back as close to a quarter after one o'clock as possible, so we can hurry along. I would like to admonish you naturally don't discuss this matter with anyone, not even among yourselves, so you don't make up your minds about any of these matters until all the evidence is in, and the case is concluded and I have charged you the law applicable to the facts, as you have heard them. Naturally, if anyone would attempt to discuss the matter with you, don't talk to them but immediately make known to me such fact and such person that attempts to talk to you. I don't imagine you will see anything in the paper on your luncheon recess, but if there would happen to be anything in the paper about this particular case, don't read it, stay away from it, so that you can keep an open and free mind on it. We will adjourn until a quarter after one o'clock.

Mr. RICHMAN. Is there any objection to my excusing Mr. Price, Mr. Erickson, and Mr. Clapp?

67 The COURT. Is there any objection, Mr. Auerbach?

Mr. AUERBACH. I think we should have Mr. Erickson.

The COURT. All right. You remain, Mr. Erickson. The rest of you are excused.

AFTERNOON SESSION

Mr. RICHMAN. With your Honor's permission, I will withdraw Mr. Green and call Sarah Lindsay.

(Mrs.) SARAH LINDSAY, SWORN.

By Mr. RICHMAN:

Q. Mrs. Lindsay, where are you employed?

A. At the Walt Whitman hotel.

Mr. RICHMAN. Speak up so I can hear you.

Q. Where; at the Walt Whitman hotel?

A. Yes.

Q. What do you do?

A. I am chambermaid.

Q. How long have you held that job?

A. Twenty years.

Q. Now, about March 10th of this year, did you have occasion to go to room 402 in the hotel?

A. I did.

Q. Who was there when you went there, and when did you go in?

A. I went in there around about half past ten.

68 Q. In the morning?

A. In the morning.

Q. That was Sunday morning?

A. Sunday morning.

Q. And who was in there?

A. Doctor Fischer and Mr. Reynolds sitting over there.

Q. Why did you go in that room at that time?

A. Why Mr. Reynolds came to me and asked me would I make the room up because they were expecting company.

The COURT. When you say Mr. Reynolds, whom do you mean?

The WITNESS. The man with the brown suit.

The COURT. Sitting at the counsel table?

The WITNESS. Yes.

The COURT. When you say Mr. Fischer, whom do you mean?

The WITNESS. Mr. Fischer? Doctor Fischer.

The COURT. Whom do you mean?

The WITNESS. The one with the pin stripe.

Q. Now, you say Mr. Reynolds asked you to come in and make up the room because they were expecting company?

A. Yes.

Q. You were in the room at half past ten on that Sunday morning, March 10th?

A. Yes.

Q. What happened when you went in?

A. I made the bed up, not the bathroom, and Doctor Fischer went and laid on the bed and Mr. Reynolds went and got 69 him some pills, and Doctor Fischer said to Mr. Reynolds, "Give her a tip." So, he gave me a tip.

Q. How much?

A. I will say about thirty-five cents.

Q. Then, what else did he say to you?

A. Then, I came out.

Q. What else did you do?

A. I went to lunch. We had our lunch about half after eleven.

Q. Is 404 the room adjoining 402?

A. Well—

Q. Is there a connecting door between 404 and 402?

A. Yes, sir.

Q. Is there a keyhole?

A. Yes.

Q. Why did you go up to room 404?

A. Why that was a check out.

Q. And then what did you do?

A. I stripped the bed. I heard glass, like glass hitting against glass or metal hitting against metal.

Q. Where?

A. In room 402.

Q. All right. Go ahead.

A. Then, I looked through the keyhole.

Q. What did you see?

A. I saw Doctor Fischer standing there, and he had—he had a piece of paper like that with a narrow envelope like that, and it seemed to me the paper was wet. He took it apart and 70 pulled a piece off and gave it to Mr. Reynolds. It looked like money to me. It was green, of greenish color like money. He gave it to Mr. Reynolds and Mr. Reynolds went to a different direction.

Q. So you could not see him?

A. Yes.

Mr. AUERBACH. Please, Mr. Richman, let the witness testify.

The COURT. I think the objection is well taken.

A. (Continuing.) He went to the opposite direction and he did not come back any more.

The COURT. You mean by that he didn't come back to your view?

The WITNESS. To my view. Then, I went to making my bed. Then, I went to look through the keyhole again. Then, the desk was turned this way. A second time, that is, I am talking about.

Q. Did you see the desk?

A. Yes.

Q. What happened then?

A. Then, I saw Doctor Fischer go on laughing and he got out a little glass bottle. They were white like that, and he set them on the desk. Then, he went back again, and he brought out something that looked like that little paint brush, artist's paint brush, and he laid them down, and I didn't bother looking again. That is what I saw. Then, I saw a magnifying glass.

71 Q. That is the first time you looked through the keyhole?

A. Yes.

Q. From room 404 to 402?

A. Yes; I did.

Q. What color was it?

A. White.

Q. Did you see any colored paper in there?

A. Green. One piece he held up at the window and it looked green; a greenish thing.

Q. Did you hear any voices?

A. I heard a voice say, "That is enough of them, that is enough of them."

Mr. AUERBACH. Who said that?

The WITNESS. I heard one of the men say that.

Q. What did he say?

A. That was enough of them.

Q. Was there any other communication between Reynolds and Doctor Fischer that you heard or was that all?

A. No; that is all I heard what I told you what was said.

Q. Weren't they laughing.

A. Yes. They looked through this microscope. It looked like a piece of green. Doctor Fischer looked and Mr. Reynolds looked too.

Q. Was that the first or the second time?

A. The second time.

Mr. RICHMAN. That is all.

72 Cross-examination by Mr. AUERBACH:

Q. Now, Mrs. Lindsay, the door that connects between 402 and 404, where is that situated?

A. Where? It is right as you come in the bedroom there. The bedroom door opens right in. Here is the door.

Q. So this is the long corridor wall of the room, is that right?

The COURT. Maybe we ought to have the benefit of some little chart in order to get this thing clarified in my own mind.

A. I can tell you. Can I stand up? Here is 402. There is their room door. Well, here is 402 door.

Mr. RICHMAN. 404.

The WITNESS. 404. I meant to say that. Right in back of this 402 is that door, and when 402 door opens to go in the room, it goes in like that, and here is this communicating door.

Q. By that you mean that when 402 is open, you can't see through the communicating door?

A. Yes; but the door was closed. When they shut the other door, then I can see because this is a communicating door.

The COURT. Do you understand now, Mr. Auerbach?

Mr. AUERBACH. I think I have a pretty good idea.

Q. Now, the keyhole is that towards the corridor or the window?

73 A. This 402 window.

Q. It is toward the window?

A. Yes.

Q. When you look through the keyhole, how much of that room can you see?

A. You can see pretty good on the window and all sides of the wall that far. You can see 402 walls up and down and there is the window.

Q. When you look through the keyhole, Mrs. Lindsay, can you see the window of 402?

A. Yes, sir.

Q. Can you see the wall of what would be the corridor wall of 402?

A. You can see that.

Q. How much of the spread of the room can you see?

A. Well, about like that.

Q. About that much? In other words, you can see an arrangement of about two feet?

A. I guess you could. I know I saw enough to see the desk. The desk is about that long.

Q. Where is the desk located?

A. It was between the window and the corridor wall.

Q. The desk is between the window and the corridor wall?

A. Yes.

Q. Isn't it against the wall?

A. Look here is the window. Can I explain myself, please?

Q. Over here?

A. Here is the window that looks to a big wide building.

74 Mr. RICHMAN. It is a corner room?

The WITNESS. Yes, it is. Here is the window, and here is the wall in 402. Well, that was right against this plain wall. Here is the window and here is the corridor wall.

Q. Is that the desk?

A. It was between the window and the corridor wall.

Q. How many windows are there in 402?

A. Two.

Q. Two windows?

A. Yes, sir.

Q. Are they on one side?

A. One is on Cooper Street and the other faces Seventh Street.

Q. One on Cooper Street and one on Broadway?

A. No; on Seventh Street it faces.

Q. One faces Cooper Street and the other faces Seventh Street?

A. Yes, sir.

Q. That leaves two walls and two windows?

A. Yes; it separates there.

Q. Is that right?

A. Yes; there is a wall on this side.

Q. That is the wall that is connected to room 404?

A. No; it isn't—I am sorry, it is towards Seventh Street. This wall where the window is is to Seventh Street.

Mr. AUERBACH. I am afraid—I am not trying to be smart, but I don't understand you.

75 The COURT. Why don't you move this blackboard down and see if Mrs. Lindsay can explain it any better on the blackboard. That is only fair in my mind. Can we agree that room 402 is situated on Cooper Street and on Broadway.

The WITNESS. It is part on Cooper Street and the other part faces Seventh Street, on Cooper Street between Broadway and Seventh Street.

The COURT. Where is the window in room 402?

The WITNESS. There is two windows. One faces Cooper and the other faces Seventh Street.

The COURT. Then it is at a corner?

The WITNESS. It is a corner room.

The COURT. It is a corner room at the northeast end of the building?

Mr. AUERBACH. No; the southeast.

The COURT. No; that is—

The WITNESS. Yes; it is on the south.

The COURT. It is on the north side of the hotel.

The WITNESS. One window faces—yes, sir; the south this way.

The COURT. One window faces Cooper Street?

The WITNESS. Yes.

The COURT. And one window faces on Seventh Street?

76 The WITNESS. Yes.

The COURT. Then, it is on the northeast corner of the hotel?

Mr. AUERBACH. The southeast.

The COURT. The southeast corner of the hotel but the northeast corner; the north side of Cooper Street.

Mr. RICHMAN. That is right.

Q. It is a corner room?

A. Yes.

Q. You say this is 402?

A. Yes.

Q. It is a corner room?

A. Yes.

Q. Is there a window there?

A. Yes; that would be Cooper; faces Cooper.

Q. Where is the other window?

A. No, sir; this is Cooper, and this would be Seventh Street. There is one window up there.

Q. We will mark that a window. There is a little bathroom here?

A. Yes; there is one window here, a little bathroom here. This is a window on this wall. That is the wall that faces Seventh Street. That is a window, that is a wall, that is the corridor, and that is a wall here.

Q. In other words, 404 would be down here?

A. Yes; down here. Do you want me to fix it for you? I can do it. Here is the desk.

77 The COURT. Put this down. We are trying to get the layout of the room.

The WITNESS. Here is 404.

Q. Coming off the corridor?

A. Here is the corridor.

Q. Make a line along there.

(Witness complies.)

Q. This is the corridor?

A. Yes; here is the room door.

Q. Is it against—

A. Yes; here is the door. It is against here.

Q. Is it against here? In other words, from here to here is the door?

A. Yes.

Mr. AUERBACH. I think we can safely use the letter "D." Can you see, Mr. Richman?

Mr. RICHMAN. I can see fine.

Q. Where is the door to 404?

A. Right here.

Q. No; the door to 404?

The COURT. The door into the hall.

The WITNESS. Right here.

Q. Here is a door from here to here and here is a door from here to here?

A. Yes.

Q. Where is the door from 402 to 404?

A. Right here.

Q. Is it up against the wall or slight against the wall?

78 A. No; it is up against the wall by hinges.

Q. Right here is another door?

A. No; only one door.

Q. This is a door?

A. Yes; this is the communicating door.

Q. Where is the desk?

A. Right here.

Q. How do you place that? Is it up against this wall?

A. Yes; right up against this wall.

Q. That is the desk?

A. Yes.

Q. Right?

A. Yes.

Q. Where is the keyhole?

A. It would be right on this door.

Q. This side?

A. Yes.

Q. Right here?

A. Yes.

Q. I think we will put an "X" right here. That is the keyhole?

A. Right.

Mr. AUERBACH. I think I will clear that up again.

The COURT. Suppose you turn that around this way, Mr. Prater, so the jury can see it.

Q. When you look through this keyhole, how far can you see, back to this wall?

79 A. Yes.

Q. How far over this way can you see?

A. You can't see very much but you can see part of the window, about like that.

Q. Your vision comes about this way. In other words, you can see, for instance, here?

A. No; right, sir.

Q. That is where all this happened, right here?

A. Yes, sir.

Q. Now, you saw Doctor Fischer who is apparently now Mr. Lustig, that is this gentleman right here?

A. Yes, sir.

Q. You saw him?

A. Yes, sir.

Q. Did you see anybody else?
A. No.
Q. Nobody else?
A. No, sir.
Q. You saw Mr. Reynolds?
A. Well, Mr. Reynolds.
Q. Did you see anybody else?
A. No.
Q. You clean this room every day?
A. Every day.
Q. Did you ever see anybody in there besides these two men?
A. No, sir.
Q. On the day you looked through the keyhole, did you hear any other voices besides these two?
80 A. No, sir.
Q. Never did?
A. No, sir.
Q. Now, when Mr. Lustig was working with this paper that you testified about, was he sitting down or standing up?
A. He was standing up at all times.
Q. Was his back to you or was he facing you?
A. The first time his back was to me; the second time, it was sideways.
Q. When he had his back to you, were you able to see what he had in front of him?
A. He didn't have much there. I could see that.
Q. You don't know whether he had much there or not. You could not see?
A. No; but I did see the wooden press.
Q. This thing?
A. Yes; it was laying on the bed.
Q. You saw this microscope, you say?
A. Yes; they were looking through it.
Q. Who was?
A. Doctor Fischer and Mr. Reynolds.
Q. Was he facing you or did he have his back to you?
A. He was sideways.
Q. Was he holding this paper up?
A. No; he was looking over it.
Q. He was looking over this at something on the desk?
A. Yes, sir.
Q. You don't know what was on the desk?
81 A. When he picked up this stuff that seemed to be white, it looked like this was greenish stuff.
Q. You don't know what it was that you saw do you?
A. No; I don't know what it was but it just came into my mind.

Q. You don't know what he had in his hands do you?

Mr. RICHMAN. Your Honor please, which time does Mr. Auernbach mean, the first time or the second time?

Mr. AUERBACH. The first time she testified he had his back to her and he didn't have anything.

Mr. RICHMAN. No; she testified she saw him pick up this piece of greenish paper.

The WITNESS. I presumed it was money. It looked like that was—

The COURT. No, no; don't presume. Do you know what it was?

The WITNESS. Yes; it looked like light greenish stuff.

Q. After all this happened, what did you do with your information? Did you call the cops up?

Mr. RICHMAN. I object. I don't think it is material.

The COURT. How is that material?

Mr. AUERBACH. Your Honor please, it is for the purpose of a motion which I hope to make later on with regard to evidence which has been secured by it.

82 The COURT. Are you laying the foundation for that motion?

Mr. AUERBACH. Yes; if your Honor please.

Mr. RICHMAN. I ask it be stricken if that purpose is not served.

Mr. AUERBACH. That is perfectly satisfactory to me.

A. I went to my housekeeper, Mrs. Brown, and told her about it.

Q. You told her what you had seen?

A. Yes, sir.

Q. Do you know if she done anything?

Mr. RICHMAN. Your Honor please—

Mr. AUERBACH. I asked her if she knows if she done anything.

Q. Do you know what she did with the information?

A. No.

Q. You didn't communicate with the police?

A. No, I didn't.

Q. Tell me this, Mrs. Lindsay, on the occasion you went into the room on Sunday morning at half past ten, were any of these materials scattered around?

A. No, sir.

Q. You didn't see anything?

A. No, sir.

Q. You didn't see these brief cases?

A. No.

Q. Or the bottles?

A. No.

83 Q. How about Saturday?

A. I was off Saturday.

Q. How about on Friday?

A. No, sir; I didn't see anything on Friday.

Q. How about Thursday?

A. I didn't see anything Thursday.

Q. In other words, on all the occasions when you cleaned the room or made the bed, that you did, you never saw any of these things?

A. No, sir.

Q. The only time you saw them was when you looked through the keyhole?

A. Yes.

Q. On two occasions?

A. Yes.

Q. When you saw these bottles?

A. Yes.

Q. And saw this greenish stuff?

A. Yes, sir.

Q. But other than that, you never saw them?

A. No, sir.

Mr. AUERBACH. That is all.

NORWOOD G. GREENE, SWORN.

By Mr. RICHMAN:

Q. Mr. Greene, you are an agent of the United States Secret Service?

A. Yes, sir.

Q. How long have you been such agent?

84 A. Since 1933.

Q. On March 10, 1946, did you go to the Walt Whitman hotel?

A. Yes, sir, I did.

Q. When did you first go to the Walt Whitman hotel on that day?

A. It was somewhere around two o'clock following a telephone call I received.

Q. From whom?

A. First, from Detective Koerner's office, of the Camden Detective Division, and next from the manager, the manager of the Walt Whitman hotel who told me his name was Mr. Shires.

Q. On that information, did you go into room 402?

A. No, sir; I did not.

Q. Did you see either Mr. Lustig or Mr. Reynolds?

A. I saw Mr. Lustig.

Q. From 404, through the keyhole, the same keyhole that Mrs. Lindsay used?

A. Yes, sir.

Q. Did you see anything going on?

A. I did not.

Q. When did you return to the Walt Whitman hotel?

A. About five o'clock.

Q. Did you then go to room 402?

A. Yes, sir.

Q. What did you do then when you came back?

A. Captain Gus Koerner and Sergeant Thomas Murphy, of the Camden Detective Division, were in the room. On the bed I saw two brief cases. I saw a large suitcase against the wall.

85 Q. Now, Mr. Greene, checking over the exhibits, are these the two brief cases, G-1 and G-15, that you saw?

A. Incidentally, I saw all three of these through the keyhole, against the wall. I saw all this paraphernalia; all of it.

Q. What do you mean?

A. All of the government's exhibits from G-2 to G-19.

Q. Now, looking at these exhibits G-1 to G-19, which are all here, did you see all of them in room 402 when you arrived there?

A. Yes, sir.

Q. Where were they?

A. On the bed.

Q. Now, did you wait there with Captain Koerner and Sergeant Murphy?

A. Yes, sir.

Q. Until when?

A. Until about six-thirty.

Q. At that time, did the defendants appear?

A. About six-thirty, a few minutes before six-thirty, I went out to get some sandwiches. I observed down in the lobby, I observed Detective Pfleiderer and Detective Arthur walking hurriedly towards the elevator. I joined them and walked up behind them to the entrance to room 402 where defendants Lustig and Reynolds were in the act of opening the door.

Q. Now, they are the two men sitting to the left of Mr. Auerbach?

A. Yes, sir.

86 Q. Who is Mr. Lustig?

A. Sitting next to Mr. Auerbach.

Q. And next to Mr. Lustig, on the other side of him?

A. Is Reynolds. Whom I knew at that as Doctor Fischer and Joseph Binstock.

Q. When they were in the act of opening the door, what happened?

A. The detectives placed the two under arrest. The door was opened by Detectives Arthur and Pfleiderer. Captain Gus Koerner searched Lustig; Detective Arthur searched Reynolds. On

Lustig's person among papers was found six hundred and some dollars in used currency—I didn't count it—on Reynolds was found a new hundred dollar bill and several new one dollar bills, and some used five dollar bills.

Q. All right, sir. Now, did you have any conversation with Mr. Lustig?

A. Yes, sir; I did. Captain Koerner turned over to me the three impressions, the face and back of a hundred dollar bill and the back of a ten dollar bill.

Q. By that, you are referring to exhibits G-17, G-18, and G-19; is that correct? [Mr. Richman hands the exhibits to witness.]

A. Yes, sir; I am referring to those impressions which are marked for identification "NGG 3/10/46," NGG for Norwood G. Greene and the date 3/10/46 on all three. I was standing between the two single beds and I said to Lustig, "Are these brief cases yours?" and he said, "Yes." He says, "The chemicals and the sheets are mine." He says, "Reynolds had nothing to do with it." He said, "I don't know anything about these impressions. I haven't made any counterfeit money. My business is showing other people how to make counterfeit money."

Q. Was there any other conversation?

A. As we were leaving the room after we had gathered all this evidence together, Lustig turned to Reynolds and said, "I told you that fellow Stein was no good and if you don't tell him so, I will."

Q. All right. Then, what happened?

A. They were taken over to the Camden Detective Division, and I had dinner, and then accompanied by Detectives Pfleiderer, I came back to the Walt Whitman hotel and found that there was a Doctor William Stein registered in room 306. I sent up, and I had Doctor Stein paged. He came down and I asked him if he had been in room 402 and he said that he had not. I told him that I was seeking information, that I wanted to know if he had been in that room, and who he had talked to and what they had talked about, and he said that he had not been in room 402, and I told him that I would have to take him over to the City Hall for possible identification by these two defendants who were under arrest.

Q. Did he later do that?

A. He did that.

Q. Were you present when these two defendants, Lustig and Reynolds, were confronted with Doctor Stein?

A. Yes, sir.

Q. What did they say to him?

A. Reynolds faced him first and said that he was not the man. Lustig faced him and first he said yes and then he said no.

Q. What did Doctor Stein say?

A. He said no.

Q. Did he say that he had ever seen him before?

A. He said he never had seen him before.

Q. How many counterfeit cases have you handled since you have been a Secret Service agent?

A. Most of our cases were handled from 1933 to 1937.

Q. Were you actively engaged in handling cases during that period?

A. Yes, sir; and I have been on counterfeiting plants both during that time and since that time.

Q. Were you also engaged in the educational program that took place at one time in educating bankers and so forth, how to detect counterfeit money?

A. Yes.

Q. How long did that educational program last?

A. That lasted about five years.

Q. What were your duties during that campaign?

A. Giving lectures, part time lectures in connection with how counterfeit money is made, how it is sold and how it is devised.

Q. And how it is detected?

A. How to detect counterfeit money.

Q. Look at exhibits G-17, G-18, and G-19, and tell me 89 whether, in your opinion, these impressions are genuine or counterfeit?

A. They are counterfeit.

Mr. AUERBACH. Counterfeit impressions.

Mr. RICHMAN. Impressions.

Q. Are they and each of them reasonable facsimiles of the bills which they are intended to imitate?

A. Yes, sir; they are.

Mr. RICHMAN. That is all.

Cross-examination by Mr. AUERBACH:

Q. Tell me, Mr. Green, are they such resemblances as to deceive an unsuspecting man; a prudent man?

Mr. RICHMAN. I object. This is not under the passing statute. This is under section 264.

The COURT. The passing—

Mr. AUERBACH. I seem to recall the word similitude.

The COURT. That is in the words of the statute.

Mr. AUERBACH. I am calling your Honor's attention to the case of the United States v. Cool.

The COURT. I will allow the question.

Q. I shall repeat it, Mr. Greene. Are these impressions, Mr. Greene—

The COURT. They merely complain about them in their present form.

Mr. AUERBACH. Yes; in their present form.

90 Your Honor please, we are concerned with these three impressions in their present form, and that is what we have been indicted for. I don't think we have to meet what would happen if there was an entirely different situation. We are charged with making a similitude of United States currency which, on its face, is in reverse. We contend that no honest, reasonable—no ordinary reasonable man would be deceived by such things. I want Mr. Greene's opinion as an expert.

The COURT. In that form in which you direct the Court's attention to the question, I will not allow the question, and I will allow you an exception.

Q. I ask this: The exhibits which you have before you are they such a likeness or resemblance as to be calculated to deceive an honest sensible man of ordinary care and observation?

Mr. RICHMAN. I object.

The COURT. To be used to calculate.

Mr. RICHMAN. That is right. With that amendment, I have no objection.

Mr. AUERBACH. With what amendment? I do not understand the amendment.

The COURT. To be used to calculate. You go ahead and put the question.

Q. I asked you, Mr. Greene, whether the exhibits you have before you are such a likeness or resemblance to United States currency as to be calculated to deceive an honest sensible, 91 an unsuspecting man of ordinary care and observation?

The COURT. Are you finished?

Mr. AUERBACH. Yes.

The COURT. I will not allow the question unless you see fit to add to it the words of the statute, "in whole or in part," as I read the statute.

Mr. AUERBACH. I will accept that. Add to the question, "in all or in part."

The COURT. No, "in whole or in part."

Mr. AUERBACH. In whole or in part, are the exhibits which are before you—

A. Yes, sir; and with your Honor's permission, I would like to elaborate on that a little bit.

The COURT. Go ahead.

Mr. AUERBACH. Your answer was yes.

A. According to our experience with Secret Service, I have obtained from businessmen a split ten dollar bill, that is the back of a ten dollar bill that was passed in this manner, it would be folded, you understand. A man could sit in a car and order a dollar's worth of gas, and after the materials had been delivered

to the car and the change given before the gas station attendant could see the ten dollar bill.

Mr. AUERBACH. Your Honor please, I do not know what connection we have between split ten dollar bills and this case. I don't think that is a proper answer.

92 The COURT. His explanation goes to how a likeness or similar to this—like this could be accepted by a person of reasonable care, and in his explanation, he is demonstrating or using the illustration of a case that actually occurred, showing how people can be fooled into accepting money. Isn't that the purpose?

The WITNESS. Yes, sir. It is just one of several cases which I could relate.

The COURT. Go ahead.

The WITNESS. This man held the ten dollar bill. He held it folded so the gas station attendant saw the numeral ten, the gas station attendant handed out nine dollars, the passer took it and the car left, and by the time the gas station attendant unfolded the bill, the car was gone. That was one type of them. We had a number of instances. Another, we have received from victims play money. You have heard of United States stage money, the exact size of genuine money. Whenever we run across that we confiscate it. Play money looks like real money because it is the actual size and color of it. In the light of those circumstances, I would say yes to Mr. Auerbach's question.

Q. Mr. Greene, are you trying to tell me that because sometimes someone folded up and split a dollar—

The COURT. Let us say split a bill.

Q. (Continuing.) Split a bill and passed it on a filling 93 station attendant that an ordinary reasonable man would be deceived into thinking that is money?

A. It is not the way an ordinary, reasonable, and prudent man would act.

Q. That is what the question says, an honest—

The COURT. An honest, sensible, and unsuspecting man.

Mr. AUERBACH. Of ordinary care and observation—an honest, sensible, and unsuspecting man of ordinary observation would be fooled by these instruments?

A. Not in its present state. Neither of these in their present state.

Q. In its present state?

A. This is incompete.

Q. So now, you say no?

The COURT. But when you add the words the court is instructing you to add, "in whole or in part."

The WITNESS. In whole or in part; yes.

Q. What do you mean by "in whole or in part, yes"?

A. You take a pair of scissors, trim this down to actual size, the actual size of a bill, then you have something that is different.

Q. You mean to tell me in this present situation nobody would be deceived?

A. I don't think so. There is too much paper.

94 Q. You say if this is trimmed—I again put my question.

An ordinary, unsuspecting person your Honor called him, to deceive an honest, sensible, and unsuspecting man or ordinary care and observation, if this was cut down, this would deceive him?

A. Based on my experience. I don't mean a bank teller.

Q. No; I don't believe anybody would try to pass these with a bank teller. Does the fact that the hundreds are in reverse, does that affect your opinion any?

A. No.

Q. So the fact that the hundred is on the reverside side on exhibit G-17 would not affect your opinion any?

A. No.

Q. You think an honest, unsuspecting man of due care and observation would accept this?

The COURT. Could.

Q. (Continuing.) Could accept this as United States currency, and that is your opinion?

A. Yes, sir.

Q. How about a person of ordinary intelligence acting with ordinary care in a business transaction?

Mr. RICHMAN. Your Honor please, we can go on all day defining various kinds of people.

The WITNESS. It depends on what kind of business.

Mr. RICHMAN. Wait a minute. I think it has been covered.

95 The COURT. I think it has been covered.

Mr. AUERBACH. If Your Honor please, I think there is a slight difference. There is a difference in the test.

The COURT. You put your question again.

Q. Would a person of ordinary intelligence acting with ordinary care in a business transaction be deceived by the instrument, by the exhibits which are before you, in whole or in part?

Mr. RICHMAN. If Your Honor please, I think we have had that question three times and it has been answered three times.

The COURT. Except by the addition of "in a business transaction." Mr. Auerbach, frankly, I don't know how you would have any transaction that involves the transfer of money which is not a business transaction.

Mr. AUERBACH. The case from which I cite uses the term business transaction.

The Court. I think we have covered the very same question in substance, three times. I will sustain the objection.

Mr. AUBERBACH. Your Honor will allow me an exception?

The Court. Yes.

Q. Do you consider, Mr. Greene, the exhibit which you have before you as being an executed or completed instrument?

A. As far as it goes; yes.

96 **Q.** Is it a completed instrument?

A. Well, completed instrument—I wish you would sort of enlighten me. The face of this hundred dollar bill is the negative impression. It is not a positive impression. Is that what you mean?

Q. I am asking you whether you think it is a completed instrument on its face?

A. It is completed so far as it goes. It is the under face of a hundred dollar bill.

Q. You are now saying you consider that to be a completed instrument?

A. Well—

Mr. RICHMAN. He says he considers it to be the complete face of a hundred dollar bill.

A. (Continuing.) It is the complete face of a hundred dollar bill. If that does not answer your question, I would appreciate your asking it differently.

Q. Your answer is this: It is a complete hundred dollar bill?

A. It is the complete face of a hundred dollar bill.

Q. Now, Mr. Greene, you say you got a call from Mr. Shires at the hotel?

A. Originally, from Detective Arthur, and then from Mr. Shires.

Q. When Mr. Shires called you from the hotel, what did he say?

A. He thought there was a violation in one of the rooms 97 of the hotel involving counterfeit money.

Q. Did you ask him on what he based his opinion?

A. No, I didn't. I told him I would be there in a few minutes.

Q. When you got the call from Detective Arthur, what did he say?

A. He mentioned also there might be a violation of the United States laws, or words to that effect. Detective Arthur called me first and said that a man at the Walt Whitman hotel thought there was some violation which pertained to a violation of the currency laws of the United States, or words to that effect, and so he asked me if I wanted one of the managers of the hotel to call me, and I said, "Yes, have him call me," and following that call I went to the hotel.

Q. Now, Mr. Shires, did you ask him the source of his information?

A. I didn't talk to Mr. Shires other than from the office.

Q. Well, from the office?

A. No, I didn't.

Q. Did you ask him if he knew in what way the laws were being violated?

A. He told me that he thought that some occupants of the room were making counterfeit money.

Q. Did you ask him the source of his information?

A. I don't recall. I eventually obtained the source.

Q. That was Mrs. Lindsay?

A. Yes.

98 Q. You didn't obtain that information on that Sunday?

A. No; not totally. I talked with Mrs. Lindsay on Sunday but I didn't talk with her very long, just a few moments, and she didn't give me the same detailed information that she testified to here on the stand until last Friday.

Q. In other words, when Mrs. Lindsay spoke to you on that Sunday she didn't tell you about this green stuff?

A. She said she saw on the table what looked like money, and she saw the doctor handling it. That was the substance of her conversation at that time. As I say, I didn't take up much time talking to her. I went down to room 404 and looked through the keyhole.

Q. Was that after you spoke to Mrs. Lindsay or before?

A. It was before.

Q. Then, what happened when you looked through the keyhole?

A. I saw Lustig walking up and down the room.

Q. Did you see Mr. Reynolds?

A. No, I didn't.

Q. Did you see the brief cases?

A. I saw that one bag and the suitcase in the corner next to the corridor wall.

Q. Did you see the press?

A. I didn't see anything except the three suitcases and the desk, and what appeared to be a magnifying glass on the top of the desk.

Q. Did you see any of the little bottles?

A. No.

99 Q. How long were you at the keyhole, Mr. Greene?

A. About fifteen minutes.

Q. Did you hear any conversation?

A. I heard voices, but the radio was on and I could not distinguish what was said.

Q. How many voices do you think you heard?

A. I don't know.

Q. Did you hear more than one?

A. I would say two.

Q. Might it have been three?

A. It might have been three.

Q. Then, where did you go?

A. I went over to detective headquarters.

Q. Whom did you see there?

A. Detective Arthur.

Q. Did you have any conversation with Detective Arthur?

A. Yes. I told him that I had not seen any evidence of counterfeiting.

Q. Were you satisfied that there wasn't any counterfeiting going on?

A. Was I satisfied that there was no counterfeiting going on? I would say yes.

Q. You were satisfied?

A. That is a difficult question to answer.

The COURT. You will have to take your frame of mind back to that Sunday afternoon at that particular time, if you can.

100 A. From an evidential standpoint, I was satisfied there was no counterfeiting.

Q. Let us not talk about it from an evidential standpoint; let us talk about it from the standpoint as to whether or not you were satisfied?

Mr. RICHMAN. Mr. Greene is an investigator for the Secret Service. He can talk about it in other ways.

Mr. AUERBACH. I am satisfied that Mr. Greene will get along very well.

The COURT. That is not necessary, gentlemen. We don't have to have speeches. We will have them at the proper time. Mr. Auerbach is attempting to lay a foundation for this evidence question, and, I think, for that purpose it is proper.

A. I was satisfied that there was no evidence of counterfeiting.

Q. In spite of the fact you had a call from Detective Arthur and had spoken to Mr. Shires who had both stated to you that there seemed to be some violation of the United States laws or something going on in that room about counterfeiting, and you being fifteen minutes at the keyhole, you were then satisfied there was nothing wrong about what was going on in room 402?

The COURT. He didn't say that. He said he was satisfied there was no evidence of counterfeiting.

Mr. RICHMAN. Insofar as he was concerned.

101 Q. That was as far as you were concerned, there was no evidence of counterfeiting?

A. That is right.

Q. So far as you were concerned, the occupants of the room were not guilty of any violation as far as you knew?

Mr. RICHMAN. If your Honor please, I object to the words not guilty.

The COURT. There was no evidence of any violation.

Mr. AUERBACH. If your Honor please, I think everybody is testifying for you but the witness. I am not trying to be fresh.

The COURT. If the questions are put properly, I think they would be all right.

Mr AUERBACH. Here is a man—we have a man here who is a Secret Service agent.

The COURT. What difference does it make if he is the President of the United States. Your duty is to put questions properly.

Q. From your observation of fifteen minutes at the keyhole, you saw no evidence of counterfeiting?

A. That is correct.

Q. You then went back to detective headquarters and you told Detective Arthur you saw no evidence of counterfeiting?

A. That is correct.

Q. So far as you were concerned, there was nothing going on in room 402 that was a violation of the internal revenue laws? So, therefore, your interest in the case ceased?

A. That is right; officially.

Q. Nevertheless—by the way, what time did all this take place?

A. About—until about—what incident are you referring to? Beginning with what and ending with what?

A. I am now interested in the incident about your telling Detective Arthur you saw no evidence and you were no longer interested in it, officially?

A. That was sometime about two-thirty.

Q. Did you remain at the detective bureau?

A. I did.

Q. Did Captain Koerner come in while you were there?

A. That is right. Detective Arthur called Captain Koerner.

Q. Did Sergeant Murphy come in?

A. That is right.

Q. Did you have any conversation with Captain Koerner?

A. I did. I told him I had been over and looked through the keyhole for fifteen minutes, and I didn't see any evidence of counterfeiting.

Q. Do you know whether or not Captain Koerner and Detective Murphy went to the hotel after that?

A. I know they left for that purpose stating they were going there.

Q. Did you get a 'phone call later on?

A. I did.

Q. What time?

A. Somewhere around five o'clock.

103 Q. Did you then go over?

A. I went over to the hotel.

Q. You went to room 402?

A. Yes.

Q. When you got there all this stuff was lying on the bed?

A. That is correct.

Q. You examined the various items?

A. I looked at it.

Q. Were you then satisfied that something was then going on concerning counterfeiting?

A. I was.

Q. As a result of that, did you—

Mr. AUERBACH. I think the official term is swear out an information, if your Honor please.

The COURT. Sign a complaint.

Q. (Continuing.) Did you then sign a complaint?

A. I did, the next day.

Q. What time the next day?

A. After I consulted Mr. Richman. The next day was Monday.

The COURT. You mean the assistant United States attorney?

The WITNESS. Assistant United States Attorney; yes.

Q. The gentleman in the brown suit?

A. Yes.

Q. When Mr. Lustig and Mr. Reynolds came in, they were searched?

A. Yes; by Captain Koerner and Detective Arthur.

104 Q. Mr. Lustig had a fairly large quantity of money?

A. Appeared to have; yes, sir.

Q. I think you testified there were no hundred dollar bills in his money?

A. That is correct. That is what we testified to.

Q. There was a hundred dollar bill found on Mr. Reynolds?

A. Well, a new one.

Q. Did you match the hundred dollar bill with that impression?

A. No, sir. I observed that the ink on this new hundred dollar bill had not been tampered with. In other words, the bill was new in appearance and I concluded it was not the pattern bill from which this hundred dollars was made.

Q. You gave the hundred dollars did you to Mr. Reynolds?

A. No, sir. At the time I looked at the bill it was in Captain Koerner's possession.

Q. Did you ask Mr. Reynolds and Mr. Lustig where they had been between the time they left the hotel and the time they came back?

A. I don't recall whether I asked them or whether Captain Koerner asked them. We found out they had been down to dinner at Gloucester. It seems to me I did ask him.

Q. Did you go to Gloucester after that?

A. The next day.

Q. Did you inquire as to whether a hundred dollar bill had been passed?

A. I asked for the proprietor and they said he had gone to Florida the night before. I asked if we might look over 105 the currency in the various cash registers. I looked over them and found nothing.

Q. When you say you found nothing, what do you mean?

A. I didn't find a hundred dollar bill or a ten dollar bill which, in my opinion had been used as a pattern one.

Q. Mr. Greene, I suggest that you that when you returned to the detective bureau, after your vigil at the keyhole, you discussed with Captain Koerner the possibility of making a raid or making an entrance into this room to see whether or not anything might be discovered that would concern itself with counterfeiting. Is that so?

A. That is not so.

Q. You never had any discussion with him?

A. I made no suggestions.

Q. Did you have any discussion with him regarding the possibility I mentioned?

A. I mentioned the names of Doctor Edward E. Fischer and Joseph Binstock. As soon as I said Binstock that name seemed familiar, and he reached over and grabbed the telephone and called Detective Sergeant Tom Murphy.

Q. You don't know whether he had been called by any city police prior to that?

A. No; I don't.

Q. You didn't discuss with Captain Koerner anything about making an entrance or going into room 402 to see whether anything would be found there?

A. No, sir.

Q. You weren't interested officially?

106 A. Officially, I wasn't interested.

Q. But, nevertheless, you remained at detective headquarters from half past two to five o'clock, unofficially?

A. I was curious to see what they would find.

Q. You had no indication as to what they would find?

Mr. RICHMAN. If your Honor please, I object. That is immaterial.

The COURT. Objection overruled. Go ahead.

A. Captain Koerner thought they might be making a race track ticket.

Q. I am talking about your intimation to Captain Koerner?

A. No, sir.

Q. You had no thought that there might be anything wrong in spite of the fact you had spoken to Mr. Shires, in spite of the fact you spoke to Mrs. Lindsay; spoken to Mrs. Arthur—

The COURT. Detective Arthur.

Mr. AUERBACH. What did I say?

The COURT. Mrs. Arthur.

Q. (Continuing.) Detective Arthur, in spite of the fact you had spoken to all three of them, looked in the keyhole, you were still curious to sit in the detective bureau from half past two to five o'clock but you weren't curious enough to check over with Mrs. Lindsay as to her information to find out whether there might be or might have been a violation?

107 Mr. RICHMAN. How many questions do we have now?

The COURT. I think we have got a minimum of three.

A. I didn't check with Mrs. Lindsay between two-thirty—between the time I left the hotel and five o'clock.

Q. You were no longer curious about her testimony?

A. I was curious as to what she might have seen.

Q. You weren't curious enough to go back to talk to Mrs. Lindsay?

A. Yes; I went back.

Q. How much later?

A. It was about ten days later. By that time, we had a collection of odds and ends.

Q. Including the two impressions?

A. Yes.

Q. Between half past two and five o'clock, you weren't curious enough to go back and talk to Mrs. Lindsay?

A. No.

Q. You weren't curious enough to go back and talk to Mr. Shires as to his source of information, and to see Mrs. Lindsay?

A. Yes.

Q. You weren't curious to talk to Detective Arthur as to his source of information of counterfeiting going on?

A. He told me there was.

Q. But, nevertheless, you were curious enough to wait in the detective bureau from half past two to five o'clock until you 108 got a call from Murphy, and all this was found out?

A. That is right.

The COURT. When you got the call from Murphy he told you at that time that they had found all this paraphernalia that has been marked here in evidence?

The WITNESS. He didn't get the knowledge at that time, if your Honor please. He said it looks like these people are making counterfeit money and you better come over.

Q. All this stuff was on the bed?

A. Yes; when I arrived.

Q. Who put it back in the brief cases?

A. Who put it back in the brief cases?

Q. Yes.

A. I believe Captain Koerner put it back in the brief cases.

Q. Was he assisted by Detective Sergeant Murphy?

A. Probably by Detective Murphy.

Q. Was it done in your presence?

A. Yes, sir.

Q. And then, when Mr. Lustig and Mr. Reynolds came back all the stuff was installed in the brief cases?

A. Yes, sir; it was all in the brief cases, and Mr. Lustig said he didn't admit ownership of the three impressions.

Q. Is that the whole conversation?

A. Yes, sir. That was the first question I asked him. I said, "Are these three impressions your's? What do you know about them?" He said, "Nothing. They are not mine." He said,

"These chemicals in the handbag, these are mine."

109 He said, "I am not making counterfeit money. I am only showing people how to make it."

Q. He readily admitted all this was his?

A. Yes.

Q. He denied this?

A. Yes; he denied them.

Q. Did you ask Mr. Reynolds whether these things were his?

A. Well, over in the detective division I asked him. He said he didn't know anything about it. His racket—his business was race track gambling.

Q. Now, tell me something, Mr. Greene, you have attempted to establish a record as an expert in the making and spotting of counterfeit money—

The COURT. The making of counterfeit money?

Q. (Continuing.) Spotting. You have no experience in the making of counterfeit money or any knowledge on that subject?

A. No, sir.

Q. Your only experience concerns itself with identifying money as being real or counterfeit?

A. Yes; and reading up on it from text books.

Q. But, you are an authority on when—you are comparatively an expert in observing whether money is true or counterfeit?

A. That is right.

Q. You have no knowledge or information about how you 110 make it; is that right?

A. Only in the light of the plants I have seized.

Q. You have seized a plant like this? When?

A. Not identical. I seized a plant with a wooden press, in a suitcase.

Q. Did they have plates?

A. Plates? I am trying to recall if they did. Yes, sir; they did. There were plates.

Q. As a general rule, Mr. Greene, in your experience in raids and everything else, did you usually find if you find counterfeiters you usually find copper plates or some plates or engraving from which the money is copied?

A. Yes, sir; copper plates and glass plates. This is transfer money.

Q. This is what?

A. What you call the direct transfer method.

Q. In your opinion, if you know, do you think you could make these things with that?

Mr. RICHMAN. I object. We have got to stop somewhere.

The COURT. I will allow it.

A. I have. I have seen these impressions made with that kind of equipment.

Mr. AUERBACH. That is all.

Mr. RICHMAN. I will offer in evidence, if your Honor please, exhibits 1 to 19, inclusive.

The COURT. At this time, the jury may step out for five 111 minutes.

Mr. RICHMAN. I have made the offer. Is there any objection?

Mr. AUERBACH. I have no objection to the introduction of the items. I am only concerned with the matter brought up by Mr. Greene. When he reached the hotel, this stuff wasn't in the brief cases. It was on the bed and it was later put in by either Mr. Murphy or Captain Koerner. Now, I am perfectly willing to say these things were there. That is not the point of my objection. I don't know whether I am sufficiently learned evidentially to know whether I have a proper objection by virtue of the fact there is a divergence in the testimony between Mr. Greene and Captain Koerner.

Mr. RICHMAN. I don't know of any.

The COURT. I don't know of any divergence. The testimony was they found them in these brief cases, and that is where they

were when Mr. Lustig and Mr. Reynolds came in, and on that point, I find nothing wrong with the evidence at all. If that is your only point—

Mr. AUERBACH. I have no objection.

The COURT. They will be received in evidence and will bear the respective numbers in evidence that they bore for identification.

(Exhibits are marked in evidence as "exhibits 1 to 19" inclusive.)

112 Mr. RICHMAN. Now, sir the Government is prepared to rest. I thought that Mr. Auerbach had a motion. We could dispose of it while the jury is out.

The COURT. Do you rest?

Mr. RICHMAN. I prefer to rest in the presence of the jury.

The COURT. All right, we will recess. I will hear you gentlemen at side bar.

AT SIDE BAR—MOTION FOR THE SUPPRESSION OF EVIDENCE

Mr. AUERBACH. I want to make a motion for the suppression of the evidence along the same lines I urged the other day—

Mr. RICHMAN. The evidence is in.

Mr. AUERBACH. I was under the impression I should again move to suppress it.

The COURT. That should have been done before it went in. However, I will not rule you out because of the untimeliness of your motion. But I think it has been established that there was a basis for the city authorities to obtain their warrant of arrest, and then, in the event there was no connection between the Federal authorities and the city authorities to the extent of an arrangement whereby the city authorities would go in and make an illegal raid, it seems to me the warrant being proper for the violation of the local

law, they went in to make an apprehension under an arrest 113 warrant, and they can make their search incident to that arrest. Even under the Federal law, I think that would be a proper search and seizure. Even if that were not so, I do not see any connivance or arrangement on the part of the Federal officers to have an illegal search made to get evidence they could not secure under the Federal law. So, I will deny your motion and allow you an exception.

MOTION FOR DIRECTION OF VERDICT OF ACQUITTAL IN FAVOR OF
DEFENDANT REYNOLDS

Mr. AUERBACH. I would like to make a motion for the direction of a verdict of acquittal in favor of the defendant Reynolds. The proof, as I heard it and so far as I can recall it, it seems to me the only evidence which might possibly connect up Mr. Reyn-

olds was a statement made by Captain Koerner, I think it was, that the bag containing two—a large bag which has not appeared in evidence was his, and in the bag was found a brown manila envelope with a pile of plain, white bond paper.

The COURT. That together with the admission on the part of the defendant Reynolds that the bag in which some of this—from which this paper came would, it would seem to me, to be enough to take it to the jury, but when you couple that with the other testimony on the part of Mrs. Lindsay that while she was watching through the keyhole, these both defendants 114 were in the act of manipulating some of that paper, and they were looking at it with a magnifying glass and chemicals were brushed over what looked like money, I think that definitely ties Reynolds in enough to take him to the jury. I will deny your motion and grant you an exception.

MOTION FOR DIRECTION OF A VERDICT OF ACQUITTAL IN FAVOR OF DEFENDANTS

Mr. AUERBACH. I would like to make another motion to the effect there is no proof in the case, of the possession of the three items, so-called similar bills, as being in the possession of Mr. Lustig and Mr. Reynolds. In view of the fact that although they were in the bag, it has been testified by Mr. Greene for the Government, that these items were all on the bed when he reached there before the return of Lustig and Reynolds, and we have no knowledge as to who put them in the bag.

The COURT. We can't just stop there. At the conclusion of the testimony of Captain Koerner and Detective Murphy, they testified, as did Greene, that they went to the room and these things were in the room, and it is also in the testimony that this room was occupied by these men for some four days prior thereto, and they admitted—according to the testimony, they admitted the ownership of the bags and the occupancy of the room although denying the possession of the impressions but admitting possession 115 of everything else, and they said, according to the testimony, that they were not making counterfeit money but that they were only there for the purpose of showing others how to make counterfeit money. I must deny your motion and grant you an exception.

AFTER SIDE BAR

The COURT. Mr. Richman, has the Government rested?

Mr. RICHMAN. I understand all the evidence is in?

The COURT. Yes.

Mr. RICHMAN. The Government rests.

CASE FOR THE DEFENDANTS

(Mr. Auerbach opens the case for the defendants to the jury.)

EMIL LUSTIG, SWORN.

By Mr. AUERBACH:

Q. Emil, where do you live?

A. 251 West 97th Street, New York City.

Q. How old are you?

A. Fifty-four years old.

Q. How many times have you been arrested?

Mr. RICHMAN. I object. He is going to attack his own witness.

The COURT. What is the basis of your objection?

116 Mr. RICHMAN. The basis of my objection is that this is

Mr. Auerbach's witness. He certainly is not going to impeach his credibility.

The COURT. No; he is attempting to give the background. I will allow it. Repeat the question.

(Question repeated.)

A. About four or five times.

Q. How many times have you been convicted of crime?

A. One time for selling a money machine.

Q. Are you, at the present time, under bail in any court in the United States?

A. Yes.

Q. In what court and in what city?

A. In the bunco court.

Q. What city?

A. New York.

Q. What are you charged with?

A. Confidence game.

Q. I didn't hear you.

A. Confidence game, swindling, or something.

The COURT. Mr. Lustig, will you try to keep your voice up so the last man in the jury box can hear you.

Q. What do you do for a living?

A. I am a manufacturer of devices, tricks and cards, and things like that.

Q. As a result of a telephone call, did you come to the city of Camden?

117 A. Yes, sir.

Q. Did you know who called you?

A. Yes; Mr. Reynolds.

Q. When did you get here?

A. About a Tuesday, March the fifth or the fourth. I think a Tuesday. I don't know the day.

Q. Where did you go?

A. I went to a saloon. I had the address. I forgot the address.

Q. Who did you meet there?

A. I met Mr. Reynolds and a fellow by the name of Weber; Joe Weber.

Q. After you left the saloon, where did you go?

A. We went to the Whitman Hotel.

Q. In Camden?

A. In Camden.

Q. Did you register?

A. Yes, sir.

Q. What name did you give there?

A. I used the name of Fischer. I registered under a name for another fellow to be able to take somebody to the room.

Q. You wrote Doctor Fischer and Binstock, on the registration?

A. Yes.

Q. Will you please tell the court and tell the jury, just what happened after you registered in the hotel?

A. Well, you please, if I go back a little, a little back to tell you the background. You see I am sick and Reynolds 118 called me on the 'phone and said that I could make a few hundred dollars, to come to Camden and perfect some device. We were selling what everybody knows about, a money machine. It is pretty hard to operate it if you don't know how.

Q. So, as a result of that call, you came to Camden?

A. Yes.

Q. Now, we have you at the Walt Whitman Hotel?

A. Yes.

Q. Tell the court and the jury what happened after that?

A. Well, Binstock and Weber came upstairs after I registered. I don't know what name he wanted to use. He told me it was Binstock. He introduced Weber who brought a brief case; a brown case.

Q. Is that brief case in court today?

A. Yes.

Q. Which one of these two brief cases is it? Is it this one?

A. No. That is mine.

Q. This one?

A. That is right.

Q. What happened after that?

A. There was some stuff in there, paper envelopes and all kinds of things, and Weber asked me, and said, "Listen, do you want to make a few hundred dollars? Would you demonstrate that money machine to me?" I said, "You haven't got enough for a set-up." I wrote down some stuff to get.

Q. What did you write down?

A. To get a press, a wooden stick and a short stick. I 119 wrote down for Binstock to get some paper cut. That is all we needed because the man had a glass, the man had the chemicals which, as an ordinary person, you buy for fifteen cents in a drug store; creoline. He brought some water color from a ten-cent store. That is all we used.

Q. You finally got all this stuff together?

A. That was about Friday night.

Q. You finally got all this stuff together that is here today?

A. Yes.

Q. Did you show Weber how to operate this money machine?

A. I explained it to him and he started to practice. Of course, there is no pressing.

Q. You can't make it with a press?

A. That is impossible to press. That is only after making the paper wet to straighten it again, you press it to make it look like the face, greenish, because you put on the top a package of white paper and you turn it around—there is an empty piece of paper on top—you take a print, not with the press, that is impossible, absolutely impossible. You have got to use that long stick in the drawer. It takes about an hour. You have to rule it. I started to explain it to Weber and he started to practice, first, with—he practiced on some magazines and books. Then, he took out three or four hundred dollars because I didn't have no hundred dollars in my possession. He gave one hundred dollar bill to Reynolds.

The COURT. You didn't have any hundred dollar bill?

120 The WITNESS. No, I didn't. I came here without money.

Weber gave me some for demonstrating the machine to him.

Q. Before we get into that, tell me about this money machine. What is this device?

A. The device is strictly a swindle. It is for people that wants to put counterfeit money—you can teach them how to make and sell it but it is impossible to make it with that machine. You can take a print. I can teach anybody in two minutes how to make that impression; anybody here in the courtroom.

Q. With that machine?

A. Yes; an impression.

Q. What do you do?

A. To take an impression?

Q. How do you swindle people?

A. You take an impression from a bill. That is all you need the money for. Then, you develop the chemicals as this is and it transfers—but it is impossible to transfer it. I was arrested eleven times on a suspicion of counterfeiting by some other public body eleven times—

Mr. RICHMAN. I object to this testimony as to how many times he was arrested out of town.

A. (Continuing.) I was not arrested. I never was arrested for counterfeiting.

Q. Tell me about this scheme. I am interested in how you work this money machine?

A. Well, the money machine is a simple thing. Every-
121 body knows it is in the papers or magazines. I just got a magazine. You take a five or a hundred dollar bill and you put it in the press but the prints are underneath, or the impression. When you take the money out, you turn the package what you get around, and there is the print. Now, you put ordinary paper which Reynolds had got in a store for fifty-five cents, put it in the machine and take this impression, and you turn it around again, and here comes out money, real money, which looks like good money. Now, a man thinks he can do it, naturally. I didn't come here to swindle anybody. I am sick. The last four years I was only convicted once for selling one of these machines. I admitted it. I am sorry I did it. I been sick the last two years. I can show that I am going to a clinic every week twice a week. I just came here to make a few dollars. I am living in a seven dollar room. I got pawn tickets for my personal clothes.

Q. Did you show Weber how to operate this flimflam game?

A. Yes.

Q. He paid you?

A. He gave me five hundred dollars in small bills and one hundred and fifty dollars expenses. He said that he was very satisfied and he was going to pick up that machine on Sunday night when I was arrested. The officers and naturally Mr. Greene they wanted to get the third person so bad, and I said, "Why?" They said, "Because he has got the rest of the stuff." I said, "What stuff?" He said, "Because of the counterfeiting." He said,
122 "You took part of the stuff out of here."

Q. Who said that?

A. Mr. Greene and the Chief of Police. He said, "Where is the other stuff?" I said, "There is no other stuff." He said, "Where is the bill you took the stuff from?" I said, "The biggest bill I got is a ten dollar bill." Now, they asked Reynolds and Reynolds has got a hundred dollar bill from Weber, a brand new one. They investigated that bill and Mr. Greene said, "There is no print taken from this. I don't know how they could use it in making counterfeit money." I never admitted counterfeiting because I know you can get fifty years. If I was counterfeiting, I would not get a little room in Camden to do it.

Q. Now, Mr. Lustig, did you make an impression of these three bills?

A. No; I didn't.

Q. When you were arrested on Sunday in your room, did you tell the Captain of Detectives and Mr. Greene that those bills weren't yours?

A. Yes, sir.

Q. Did you admit ownership of the other items?

A. Only the brown bag. I brought one shirt and one pair of socks. I intended to stay one or two days because I intended to go to the hospital. I had that bag open. There was a brown shirt. I just got a shirt, and a pair of socks.

Q. When you left the room at three-thirty that Sunday afternoon, was that stuff in the brief case?

A. No; Weber was in the room. He had the stuff. He 123 was experimenting with the stuff.

Q. When you left the room, Weber was still there?

A. Yes.

Q. Who went with you?

A. I went with Reynolds to get something to eat and get some beer.

Q. Where did you go?

A. He took me in the county. I don't know Camden.

Q. When did you get back?

A. Oh, about six o'clock.

Q. When you got back, who was in the room?

A. About four or five detectives with revolvers and pistols.

Q. They asked you whether this stuff was yours?

A. Well, I don't know. I was excited. One of them had a pistol on me and one of them had a pistol on Reynolds.

Q. Will you now say that this paraphernalia that is here can that be used to make impressions of genuine money?

A. You can take an impression of any kind of paper, any kind of paper, that is, money, with creolin.

Q. How about this press?

A. That had nothing to do with it.

Q. It has been testified—

A. That is a money box. That is where you switch. That is a device. You turn it around and here comes money out, and when you turn it around again here comes the money. Naturally you leave it in for an hour to make it look like the genuine thing, but a smart person would not ever be fooled.

Q. Have you been able to get people who weren't so smart 124 to invest in this thing?

A. No, sir. I might say there was a fellow came to me in Chicago. I will tell you why I was convicted—

Mr. RICHMAN. I object.

The COURT. I think we are far afield.

The WITNESS. I just want to—

The COURT. No, Mr. Lustig.

Q. Did you make these impressions that were found in your room?

A. No, sir. I could not make them. I can prove that because I am paralyzed and you need a lot of strength to make them. It takes a very strong man to make an impression.

Q. Do you make it with this press?

A. No.

Q. What do you make it with?

A. That long stick, and the little round stick. I can prove it in court.

Mr. AUERBACH. That is all. Cross-examine.

Cross-examination by Mr. RICHMAN:

Q. These exhibits here, the G-7, all these bottles, they are yours aren't they?

A. Two of them are mine.

The COURT. Two of them.

The WITNESS. I will show you. He used creolin. Wait a minute. How did the liquid come for all these bottles?

125 The COURT. The three of them?

The WITNESS. Yes, the green one.

Q. You are referring there to G-7h, G-7f and G-7e. Now, these brushes and the eye dropper, are they yours?

A. Yes, sir.

Q. Those and the impressions are they yours?

A. No, sir.

Q. Whose are they?

A. They belong to Weber.

Q. How about these tweezers; these two sets of tweezers?

A. Yes, sir.

Q. How about these other bottles; who owns them?

A. Weber; Joe Weber brought it.

Q. And left them in your room?

A. Yes, sir. Here is a pen.

Q. How about this little sponge?

A. Belongs to me.

Q. All of this stuff in this tray either belongs to you or Weber and was all kept in your room?

A. Yes, sir.

Q. You knew it was there?

A. Yes, sir.

Q. And Reynolds knew it was there?

A. Yes, sir.

Q. Now, about this wooden press, is that yours?

A. No; Weber brought it. I told him to have it made. I wrote down some items.

Q. You told him how to have this made?

126 A. He knew that, sir. He knew practically the whole thing of the money machine. He didn't know how to operate it. I came here to explain how to operate it.

Q. What is Weber's first name?

A. Joe.

Q. Where did he come from?

A. In Philadelphia.

Q. Where did he live?

A. In Philadelphia.

Q. Where?

A. I don't know. He is a friend of Reynolds.

Q. Did you ever see him before?

A. No.

Q. When is he supposed to have brought this press to your room?

A. The next day when I checked in I wrote him down a lot of items to get in Philadelphia, the press, the water color, some paper to get, a lot of items.

Q. This was in your room from the day you got here until the day you were arrested?

A. No; he brought it Friday; Saturday noon he brought it.

Q. It was there in your possession from Saturday noon until the day you were arrested, that is, Sunday night?

A. Yes.

Q. Reynolds knew it was there?

A. Yes.

Q. How about this stick marked "G-13," is that yours?

A. No.

127 Q. How did that get into your room?

A. Weber had it with him when he brought it in at the same time when he brought the press.

Q. So, it was in your possession from Friday noon—

A. Saturday noon.

Q. (Continuing.) To Sunday night?

A. And the little stick, too.

Q. Now, these two things, G-13 and G-14, with them you can make impressions, can't you?

A. Well, I think I could.

Q. How long were they in your room?

A. About twenty-four hours.

Q. How many impressions did you make with them?

A. Me?

Q. Yes.

A. I didn't make any impressions because I told you I am not strong enough.

Q. Who did make them?

A. Weber.

Q. Were you there?

A. No.

Q. Where were you?

A. I was out four or five times eating; in and out.

Q. Didn't you tell Weber how to use them?

A. Yes, sir.

Q. You didn't stay there?

A. It is simple. If I showed you, you could do it.

Q. You didn't stay and watch him do it?

128 A. I don't remember.

Q. You don't know, do you?

A. I don't know. I could not remember.

Q. You could not remember?

A. Because it was so simple. If I told you, your Honor—

Q. How about this glass plate, is that yours?

A. That is mine.

Q. What is this for?

A. It is to lay on the table in case the chemical—not to leave any spots because you see that creolin smells bad.

Q. And all these various bundles of paper, are they yours?

A. No.

Q. How did you get them in your room?

A. Reynolds—I told Weber to have them cut and Reynolds and Weber went out, and they met a fellow by the name of Garfield in a saloon, to have them cut here in town in a little print shop.

Q. And when were they brought to your room?

A. They were brought to my room at the same time with the stick that is here, and the press.

Q. Saturday noon?

A. Yes, sir; about Saturday noon.

Q. So, all these things, the paper, the chemicals, the little round stick, the big stick, the press, the tweezers, and everything was in your room in your possession from Saturday noon to Sunday night?

A. Yes, sir.

Q. And Reynolds knew all about it?

129 A. Yes, sir.

Q. Why did you register under the name of Doctor Edward E. Fischer?

A. Because Weber told me to be careful that he is well known in Pennsylvania. So did Reynolds. He said, "I am known here as a race horse man, a card player, and they might get me on that."

Q. Are you known in town? Are you known as Emil Lustig, in Camden?

A. No.

Q. Why did you register under the name of Doctor Edward E. Fischer?

A. Well, my business wasn't absolutely legal, and I didn't want to implicate myself, if they did something.

Q. Were you ever known as Weber?

A. No; that is, yes.

Q. When?

A. Oh, about eighteen years ago.

Q. Where?

A. In Chicago.

Q. San Francisco?

A. No.

Q. When were you arrested the first time?

A. You mean in America?

Q. The first time. I mean anywhere.

A. Anywhere? I don't remember.

Q. Yes.

A. I don't remember. I used to be a gambler.

129 Q. Wasn't it in 1910, in Vienna?

A. Me?

Q. Under the name of Ludwig Weber?

A. No.

Q. Weren't you pinched over in Austria on October 3, 1914, under the name of Ludwig Weber?

A. No, sir; no, sir. Emil Lustig, everybody knows him in Austria because I was born in England. My father used to be a very big man, and we went to Austria. Everybody knows him.

Q. Weren't you arrested in Vienna in 1915 for fraud, under the name of Ludwig Weber?

A. No.

Q. And in 1917 under the name of Emil Lustig?

A. I was stopped in Vienna in 1917 on account of being a foreigner, and punished.

Q. You were punished?

A. On account of being an American citizen and they gave me a fine of ten dollars.

Q. You were punished?

A. Yes; as undesirable man, no agreement involved.

Q. Weren't you arrested in Chicago in 1925 under the name of Edward Baker?

A. Yes, sir; in a gambling house.

Q. Weren't you wanted by the Salt Lake City police in 1925 as L. E. Weber?

A. For running a gambling house.

Q. Weren't you arrested in a raid in Detroit in 1929,
130 under the name of Oscar Miller?

A. In a book making place, backing horses.

Q. Weren't you arrested in Austria in 1940 for forging money
orders, under the name of Emil Lustig?

A. No, sir; never.

Q. Weren't you arrested at San Antonio, Texas, under the name
of Doctor Edward E. Fischer, in 1930?

A. No, sir.

Q. Weren't you arrested in Chicago for a confidence game, in
1930, as Doctor Edward E. Fischer?

A. No, sir.

Q. You don't remember?

A. I don't recall. I don't think so. You might have me mixed
up with somebody else.

Q. Yes; with Doctor Fischer. Weren't you arrested again in
Chicago as Mr. Baker, in November, 1931?

A. Excuse me, I was arrested a lot of times in Chicago for
gambling.

Q. You told us you were only——

A. Why don't you say why? Why don't you tell the jury
why?

Q. You tell them how many times you have been arrested?

A. I don't remember.

Q. You told us four or five times?

A. That don't mean arrested what you are reading. I was de-
tained, I was only stopped. I wasn't arrested here in Camden.

The COURT. You weren't.

131 The WITNESS. Your Honor, they told me I am not ar-
rested. Mr. Greene told me I am not arrested.

The COURT. Why did you appear before this court and ask for
bail?

The WITNESS. Oh, excuse me, your Honor. I mean before I
came here. I mean about the detectives took me down to the
station and asked me if I am "making book." I don't call this
arrested. Is that arrested? I mean they don't have no warrant
or anything.

Q. Now, Mr. Lustig, how about Joplin, Missouri, in 1924,
weren't you arrested under the name of Otto Berger?

A. I don't remember. This is too long back.

The COURT. Mr. Richman, I think we have gone far enough into
that.

Mr. RICHMAN. I would like to go just a little further.

Q. Weren't you arrested in Chicago in 1936 for counterfeiting?

A. No.

Q. What?

A. No, sir.

Q. I want to ask you again: On the sixteenth of November, 1936, weren't you arrested by the United States Marshal at Chicago, for counterfeiting?

A. No, sir.

132 Mr. RICHMAN. Your Honor please, I would like to ask the witness whether he understands "arrest" and "conviction" to be synonymous.

The COURT. Were you ever apprehended by a United States Marshal in Chicago or any Federal agent in Chicago, on a charge of counterfeiting?

The DEFENDANT. Excuse me, your Honor. Can I explain it?

The COURT. Do you understand my question?

The DEFENDANT. I was arrested for having a supply of one-dollar bills in a hotel room.

The COURT. By whom?

The DEFENDANT. By a city detective.

The COURT. Did he subsequently turn you over to the Federal authorities?

The DEFENDANT. Yes, sir; and I was acquitted. They didn't even listen to the men because it was found in a hotel room, and they said that does not mean—that is not counterfeiting. That is for simulating United States currency I was arrested for, but not for counterfeiting.

Q. Finally, they got you in New York for selling a money machine?

A. What?

Q. They arrested you in New York for selling a money machine?

A. No, sir.

Q. Well, what—

133 A. No, sir.

The COURT. Didn't you tell us you were under bail at the present time?

The WITNESS. Your Honor, I was arrested with a fellow. He had in his possession about fifty dozen nylon stockings.

The COURT. Didn't you tell us you were under bail at the present time, in New York City?

The WITNESS. Yes, sir.

The COURT. What was that for?

The WITNESS. The fellow had fifty dozen—

The COURT. What are you charged with?

The WITNESS. Grand larceny.

Q. Didn't you do eighteen months in jail personally, and just get out last December?

A. Yes, sir.

Q. What for?

A. Selling one of these money machines. That is the only time I ever was convicted.

Q. All right, Mr. Lustig. As I understand your testimony, it is possible to make an impression of money with the materials you had in your room?

A. Oh, yes; you can do it. I wasn't supposed to do that.

Q. You knew how to use them?

A. Yes.

Mr. RICHMAN. That is all.

134 The COURT. Mr. Lustig, I don't want to put any words in your mouth; I didn't want to be unfair to you in any way, and if this is not exactly so, you say so, but do I understand your testimony to be that you were showing Weber how to do this proposition?

The WITNESS. Yes, sir.

The COURT. And you were telling Weber that this was a scheme whereby he could make counterfeit money?

The WITNESS. No.

The COURT. But that you actually knew you could not do it?

The WITNESS. Nobody could do it.

The COURT. You knew in your mind that you could not do it?

The WITNESS. Yes, sir.

The COURT. But that you told Weber you could do it in order to sell him the machine?

The WITNESS. No, no, your honor. Weber knew the whole business but he didn't know the inside of the business. He didn't know the operation of the machine because that is very complicated.

The COURT. That is what he paid you the \$500 for?

The WITNESS. Yes.

The COURT. To find out the inside operation of the machine?

135 The WITNESS. The inside—to show the man how to play my cards. I know five or six of these devices.

By Mr. RICHMAN:

Q. But Mr. Lustig with this press and this ruler, and all the paper and necessary chemicals, if you had the strength, you could make some impressions?

A. Yes; if I had the strength.

Q. You know how to tell somebody else?

A. Yes.

Q. You told Weber how to do this?

A. Yes.

Q. You told Reynolds?

A. He was in the room. I don't know whether I told him. I don't want to get him in.

Mr. RICHMAN. That is all.

By Mr. AUERBACH:

Q. I show you a comic book "Super Rabbit"—

A. I am sick. I don't feel like looking. This is a serious thing to accuse me of making counterfeit money. I can get fifteen years.

The COURT. We are not concerned in the trial of this case whether you can get fifteen days or fifteen years, or anything else, Mr. Lustig. To my recollection you have said it is a serious thing two and maybe three times, and don't say it again.

Q. In this comic book, is this duplicating machine based on the same principles that the money machine you showed Mr. Weber is based on?

136 A. Yes, sir.

Mr. RICHMAN. I object. How is that material?

The COURT. I don't see how it is material.

Mr. AUERBACH. It might be true that this money machine is so prevalent that it is in the comic strips too.

Mr. RICHMAN. Mr. Auerbach is trying to make light of a very serious charge.

Mr. AUERBACH. That is all.

The COURT. You may step down.

Mr. AUERBACH. That is our case, if your Honor please.

The COURT. Any rebuttal?

Mr. RICHMAN. No.

137

In United States District Court

[Title omitted.]

Charge of Court

Per MADDEN, U. S. D. J.:

Ladies and gentlemen, we now come to that point of the case where after a full and fair consideration of all the evidence adduced before you coupled with the instructions of law as I will give them to you in the charge, you will retire and deliberate upon the guilt or innocence of the defendants as charged in the indictments.

These defendants are charged in two indictments found by a Grand Jury, namely, 3829c and 3875c, charging them with certain offenses. Now, I will presently read these to you, but before doing so, I want to explain that the mere fact that a Grand Jury has seen fit to indict these defendants and present these charges against them that that creates absolutely no burden on these defendants.

It creates no inference in the slightest degree of their guilt. It is merely a formal way of putting down in writing the nature 138 of the charge that the Government brings against these particular defendants. The mere fact that a Grand Jury sat and considered this is not to be any inference as to the guilt or innocence of these particular defendants. I also call your attention to the fact that in the Grand Jury only one side of the case is heard.

In indictment 3829c, there are three counts. The first count says that on or about the 10th day of March, 1946 in the city of Camden and district of New Jersey, the defendants—and it names these defendants, not under the authority and direction of the Secretary of the Treasury or other proper officer of the United States, did unlawfully and feloniously print, make and execute, cause to be printed made and executed, and aid in printing, making and executing and engraving, print and impression in the likeness of a true and genuine obligation of the United States and parts thereof, to wit, a Federal Reserve bank note of the Federal Reserve Bank of Philadelphia, Pennsylvania of the denomination and value of \$100.00, the face and back of which said obligation are of the following tenor and effect, and then they are set forth in the body of the indictment, contrary to law.

The second count is at the same time and place, these defendants not under the authority and direction of the Secretary of the Treasury or other proper officer of the United States did unlawfully and feloniously print, make and execute, cause to be printed,

139 made and executed and aid in printing, making and executing an engraving, print and impression in the likeness of a true and genuine obligation of the United States and parts thereof, to wit, a Federal Reserve bank note of the Federal Reserve Bank of Philadelphia, Pennsylvania, or silver certificate of the United States, the exact identity of said note being to the Grand Jurors unknown, of the denomination and value of \$10.00, the back of which said obligation is of the following tenor and effect. and it is set forth in the indictment, contrary to law.

The third count is that at the same time and place namely, on the 10th of March, at Camden, these defendants did unlawfully and feloniously have in their control, custody, and possession the following:

(1) An engraving, print, and impression of the face of a Federal Reserve bank note of the denomination and value of \$100.00, which said engraving, print and impression is more particularly set forth in count 1, and is made part hereof.

(2) An engraving, print and impression of the back of a Federal Reserve bank note of the denomination and value of \$100.00, which said engraving, print and impression is more particularly

set forth and described in count 1 of this indictment and is made part hereof.

(3) An engraving, print and impression of the back of a Federal Reserve bank note or silver certificate, the exact identity of said impression being to the Grand Jurors unknown, of the 140 denomination and value of \$10.00, which said engraving, print or impression is more particularly set forth and described in count 2 and is made part hereof.

(4) Wooden press.

(5) A package of 100 sheets of bond paper.

(6) Four packages containing 100 sheets of bond paper.

with intent to use those things hereinbefore particularly described and to suffer same to be used in forging and counterfeiting obligations of the United States and parts thereof, contrary to law.

The second indictment, namely, indictment 3875c—both of these indictments have been consolidated for the purposes of this trial—in the first count says that on or about the 10th day of March at Camden, this district, these defendants not under the authority of the Secretary of the Treasury or other proper officer of the United States did unlawfully and feloniously have in their possession and custody an obligation and security made and executed in part after the similitude of an obligation and security issued under the authority of the United States, to wit, a Federal Reserve Bank note of the Federal Reserve Bank of Philadelphia of the denomination and value of \$100.00, the face and back of which are of the following tenor and effect, and then that is set forth in the indictment, with the intent to use same contrary to the form of the statute in such case made and provided, and against the 141 peace and dignity of the United States.

The second count is that on or about the 10th day of March 1946, at Camden, these defendants, not under the authority of the Secretary of the Treasury or other proper officer of the United States did unlawfully and feloniously have in their possession and custody an obligation and security made and executed in part after the similitude of an obligation and security issued under the authority of the United States, to wit, a Federal Reserve bank note of the Federal Reserve Bank of Philadelphia, Pennsylvania, or silver certificate of the United States the exact identity of said note being to the Grand Jurors unknown of the denomination and value of \$10.00, the back of which said obligation is of the following tenor and effect, and then it is set forth in the indictment, with the intent to use the same contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

You will take into the jury room with you the indictments that

I have just read to you together with the other exhibits in the case, for your aid in reaching a conclusion as to the guilt or innocence of these defendants or of each of them.

Before going any further, I want to charge you that you are the sole judges with relation to the facts. You are to determine them from what you concede is the believable testimony taking into consideration the probabilities and the attitudes of the 142 witnesses. If, according to your recollection, the court or counsel errs in its or their statement of any evidence whether disputed or undisputed, or if the court or counsel assumes or states the existence of presence in the case of evidence that is not actually in the case, not actually before you, you should disregard the recollection of the court or counsel, and rely solely upon your recollection and not upon the recollection of the court or of counsel.

In weighing the evidence, you have the right to examine into the credibility of the various witnesses, and in so doing, you may take into consideration their demeanor on the witness stand, their interest in the outcome of the case, the vagaries of the human mind in its attempts to recall past matters, the opportunities of the witnesses to see and hear what may have taken place, and the likelihood of their making particular note or recalling particular events. You may then accept the credible and reject the incredible.

This is naturally a serious charge, as is any criminal charge and is to receive your full, fair, and deliberate consideration. You are not to be swayed by passion or prejudice or, on the other hand, by sympathy.

If, during the course of the trial, I have argued with either Government counsel or defense counsel, or I have slapped their wrists from a legal standpoint, you are not to consider that because 143 counsel must argue the case and present the case in their own light for the betterment of their own point of view and the rule of law involved. So, you are not to take the repercussions of the court or of any counsel in any degree into your consideration of the guilt or innocence of the defendants, and the best way I can tell you how to perform your duties is to pay attention strictly to your oath "that you and each of you do solemnly swear that you will well and truly try this issue and a true verdict render, according to the evidence, so help you God."

Now, this is a criminal matter, and in all criminal matters, it is necessary for the Government to prove the guilt of the defendants beyond a reasonable doubt. In other words, when the defendants come into this court room charged with crime, they walk in with a cloak of innocence surrounding them. That cloak of innocence is not any imaginary figment; it is a real thing. It places upon the Government the burden of proving the guilt

of the defendants of the offenses charged in these indictments beyond a reasonable doubt. Now, what is a reasonable doubt? A reasonable doubt is not a mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. In other words, if after a fair and deliberate consideration of all the testimony, you feel that the defendants, both of them or either one of them,

144 is guilty beyond a reasonable doubt, and that the Government has so proven it, then it is your duty to convict. If, however, there exists in your mind, a reasonable doubt, as I have explained it, of course, the Government has failed to prove it beyond a reasonable doubt, then it is your duty to acquit.

Now, in this particular case, there is some testimony as to reputation or criminal convictions in the past. You are not to take such records of previous convictions into consideration as to the fact that the defendant would commit the act as charged here but such testimony is adduced solely for the purpose of affecting the defendant's credibility as a witness, and that is the light in which it is received, and that is the only light in which you are to accept it.

Another thing, as you have in this particular case, two individual defendants, you must consider their cases separately and individually. One of these defendants has seen fit to take the stand in his own behalf, in his own defense. The fact that the other defendant has not seen fit to go on the stand is not to raise any presumption in your mind against him because by his mere appearance here and his entry of a plea of not guilty, he puts the Government at issue. He creates the issue and it is then incumbent upon the Government to prove him guilty beyond a reasonable doubt.

I have read to you the indictments and the pertinent parts thereof. I shall now read to you the pertinent parts of the statute that Congress has adopted, enacted into law as the law pertaining to this particular case. "Whoever shall have in his control, 145 custody or possession any plate, stone or other thing in any manner made after or into the similitude of any plate, stone or other thing from which any such obligation or other security has been printed with intent to use such plate, stone or other thing or to suffer the same to be used in forging or counterfeiting any such obligation or other security or any part thereof, or whoever shall have in his possession or custody except under authority from the Secretary of the Treasury or other proper officer any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued un-

der the authority of the United States, with intent to sell or otherwise use the same, or whoever shall print, photograph or in any other manner make or execute or cause to be printed, photographed, made or executed or shall aid in printing, photographing, making or executing, any engraving, photograph, print or impression in the likeness of any such obligation or other security or any part thereof or shall sell any such engraving, photograph, print or impression except to the United States or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such engraving, photograph, print or impression except by direction of some proper officer of the United States, shall be guilty of a crime."

Now, you are not to concern yourselves with the amount of time to which the defendants, if found guilty, could be sentenced or the penalty that could be imposed. It has been brought into this case by defendant Lustig that he could suffer a certain penalty. You are not to concern yourselves with that. You are to concern yourselves solely with the guilt or innocence of these defendants or each of them as charged under these indictments and the law as I have given it to you.

Now, so that you might have a full understanding, I think it would be well if I would charge you on the law of aiding and abetting. Under the statutes of the United States, anyone who aids or abets in the commission of a violation of the law is guilty just the same as a principal, just the same as though he did it himself. I shall read you the statute: "whoever primarily commits an act or aids, abets, counsels, commands, induces or procures its commission is a principal."

There are certain phases of circumstantial evidence in the matter, and, I think, I should charge you in relation to circumstantial evidence. Circumstantial evidence is that evidence which tends to prove a disputed fact by proof of other facts which have a legitimate tendency to lead the mind to a conclusion that the fact exists, which is sought to be established. It must be such evidence as to exclude every reasonable doubt of the guilt of the defendant and if it does not do so, or if you believe the circumstances to be as consistent with innocence as with guilt, then it is your duty, and you must acquit the defendant.

147 You, therefore, in this particular case will consider all of the evidence. You will consider it as to each individual defendant.

You can render anyone of three verdicts. You can either find both men guilty, if you feel that the Government has proven the charge beyond a reasonable doubt or if you feel that such proof

has failed, you can acquit both defendants or you can acquit one and convict the other.

You will consider the evidence as it has been adduced here as to each particular defendant, as it applies to him.

It is necessary for the purpose of finding a verdict that all members of the jury agree upon that verdict. It is your duty to agree if possible. In conferring together, you are to pay a proper respect to each other's opinion and examine such beliefs in a spirit of fairness and candor. This does not mean that any member of the jury shall yield his well grounded opinion or violate his oath, but it means he shall not stand out in an unruly or obstinate way. Members of a jury should always closely scrutinize the facts from their own standpoint and the viewpoint also of their fellow members of the jury. While, undoubtedly, the verdict of a jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unity by a comparison of views. A juror should listen with deference to the arguments of his fellow jurors, and with a distrust of his own judgment if he finds the large majority of the jury taking a different view of the case from that which he does himself.

148 With those instructions and with the exhibits, you may retire.

149

Proceedings after return of jury

(Jury polled by Clerk. All answer present.)

The CLERK. Members of the jury, have you agreed upon a verdict?

The JURY. We have.

The CLERK. Who shall speak for you, the foreman?

The JURY. The foreman.

The CLERK. Madam Foreman, as relates to indictment 3829c as to defendant Emil Lustig, how say you? Do you say you find the defendant guilty or not guilty on the first count of that indictment?

The FOREMAN. Guilty.

The CLERK. As relates to the defendant Emil Lustig on the second count of that indictment, how say you? Do you say you find the defendant guilty or not guilty on the second count of that indictment?

The FOREMAN. Guilty.

The CLERK. As relates to the defendant Emil Lustig on the third count of that indictment, how say you? Do you say you find the

defendant guilty or not guilty on the third count of that indictment?

The FOREMAN. Guilty.

The CLERK. Now, defendant Emil Lustig on indictment 3875c, and as to the first count of that indictment, how say you? Do you say you find the defendant guilty or not guilty on the first count of that indictment?

150 The FOREMAN. Guilty.

The CLERK. As relates to the defendant Emil Lustig on the second count of that indictment, how say you? Do you say you find the defendant guilty or not guilty on the second count of that indictment?

The FOREMAN. Guilty.

The CLERK. Now, as to defendant Thomas Edward Reynolds on indictment 3829c, as he stands charged in the first count, how say you? Do you say you find the defendant guilty or not guilty on the first count of that indictment?

The FOREMAN. Guilty.

The CLERK. As to defendant Thomas Edward Reynolds on indictment 3829c, as he stands charged in the second count, how say you? Do you say you find the defendant guilty or not guilty on the second count of that indictment?

The FOREMAN. Guilty.

The CLERK. As to defendant Thomas Edward Reynolds, on indictment 3829c as he stands charged in the third count, how say you? Do you say you find the defendant guilty or not guilty on the third count of that indictment?

The FOREMAN. Guilty.

151 The CLERK. As to defendant Thomas Edward Reynolds on indictment 3875c as he stands charged in the first count, how say you? Do you say you find the defendant guilty or not guilty on the first count of that indictment?

The FOREMAN. Guilty.

The CLERK. As to defendant Thomas Edward Reynolds on indictment 3875c as he stands charged in the second count, how say you? Do you say you find the defendant guilty or not guilty on the second count of that indictment?

The FOREMAN. Guilty.

The COURT. In other words, ladies and gentlemen, you find the defendants Emil Lustig and Thomas Edward Reynolds guilty in all counts of all charges?

The JURY. Yes, your Honor.

The COURT. And so say you all?

The JURY. Yes.

The COURT. Are there any requests, Mr. Auerbach?

Mr. AUERBACH. No requests.

The COURT. You are discharged with the thanks of the court, and you will report tomorrow morning at a quarter to ten o'clock.

Thank you.

152

Proceedings of sentence

Mr. RICHMAN. I move sentence as to both defendants.

The COURT. I will hear you. Do you have any objection to the imposition of sentence?

Mr. AUERBACH. No, I don't. I would like to say with regard to Mr. Reynolds that I think it is pretty well established that Mr. Reynolds was a sort of middle man in this thing. I don't think he is involved in this as a practice. He is guilty of, perhaps, bringing two people together to formulate some sort of scheme. I don't think he is personally involved in counterfeiting as such which is the sum and substance of this indictment, and I would like to ask consideration for him.

Your Honor, with regard to Mr. Lustig, I don't know that there is anything special that can be said. Your Honor is as familiar with the situation as I am. It is not my province to go beyond the province of the jury, and that is not my intention. So far as this court is concerned, this is the first offense for either of these defendants, and as such I think some consideration might be shown to them.

The COURT. At this time, Mr. Auerbach, I would like to say that you handled this case at the appointment of the court. I appreciate the service that you rendered the court and I thank you for it. You handled the case well, presented it well

considering what you had to work with.

153 Lustig, do you have anything to say before I impose sentence upon you?

Mr. LUSTIG. Yes; I would like to say that I am not guilty on that charge. I never intended—I never in my life intended—

The COURT. The jury has found you guilty and I certainly can't help but agree with the verdict of the jury.

Mr. LUSTIG. We are all human, and we all make mistakes. I am not afraid of nothing but I am innocent. This thing I didn't have in mind. I been arrested eleven times for the same thing. You can ask Mr. Gallagher, the Chief of the Secret Service in Chicago. I was arrested for the same thing.

The COURT. You know too much about money. Its making and its monkeying around, and everything else. You are 54 years of age; you are old enough to know better.

Mr. LUSTIG. It is 100 years on the record, and there are four thousand people in the country.

The COURT. You been arrested so many times you can't even remember.

Mr. LUSTIG. It has nothing to do with counterfeiting.

The COURT. You haven't learned all these things about money without knowing a whole lot more in the court's opinion. I see no further purpose to be served in dealing—in delaying 154 this matter or asking the probation system for a report on you. I will now impose sentence of the court—

Mr. LUSTIG. Your Honor, can I say something else?

The COURT. Yes.

Mr. LUSTIG. You can check up on it. If I was going to do counterfeiting I would not do it in a small room in Camden. To make counterfeit money, it takes eight or ten months to make a plate. I know all the things to do in counterfeiting money. I read about it and studied it. There is no way on earth to make counterfeit money without a plate or stone. There is advantage to making counterfeit money without a stone, and the Secret Service of the United States knows that. Mr. Gallagher, the Chief of the Secret Service in New York, the Chief of the Secret Service in Cleveland, in Detroit have had stuff like this. They got ten thousand dollars worth. They have prints for them. It takes plates to make it and they always throw the case out. They give you three or four months in Texas for simulating United States currency. I know everything about transferring as I am a chemist. You cannot transfer ink. That is impossible. You cannot take a print with a press, that is impossible. With this material, it is impossible to make it. I will leave it to anybody here. I don't know what you will do. I am here for punishment but I am innocent.

155 The COURT. Well, the jury has found you guilty after what I consider a fair trial. I tried to be as fair as I could during the course of the trial—

Mr. LUSTIG. Thank you, your Honor.

The COURT. Even though I might have had my own personal ideas as to your guilt or innocence, but, nevertheless, that is the way the Government works. I think you got a fair trial, and, I think, everybody else including the jury gave it consideration. So far as the court is concerned, you are guilty, and you are

going to be sentenced. After a full and fair consideration, the sentence of the court is:

On indictment 3829c that you be committed to the custody of the Attorney General of the United States or his duly authorized representative for a period of five years.

On indictment 3875c that you be committed to the custody of the Attorney General of the United States or his duly authorized representative there to be committed to the proper institution for a period of three years, the three years on indictment 3875c to be consecutive, to run consecutively to the five years on indictment 3829c. That is all.

Mr. Reynolds, do you have anything to say?

Mr. REYNOLDS. I am perfectly innocent. I don't know what it is all about.

The COURT. I can't believe that. I think you knew what it is all about. I think you got to monkeying around. You know as well as I do that you can't deal with currency of the Government. You know it now, I guess, a little better than you knew it before. You know what impresses me in this case more than anything else is that you big time operators had to come to little dinky Camden to get caught. I guess a thing like this could not happen in New York because the maid as she was going along could not look through adjoining keyholes in New York to see what was going on. I know that much about hotel rooms in New York, but here in little Camden, a hick town, a big shot gets caught. That is certainly the irony of fate. I guess the place where you belong is where you will be under guard and surveillance, and if you were there, you might not have let down the bars and been with Mr. Lustig. Mr. Reynolds, you have been convicted more for your association and company than anything else, but you won't be sentenced for that. You will be sentenced on what the court feels is a proper verdict coupled with your actions in this case.

Mr. RICHMAN. May I make a representation to your Honor with respect to Mr. Reynolds? I have discussed this matter with the Secret Service. Insofar as Mr. Reynolds is concerned, we are not convinced that he is a responsible operator in counterfeit money. We are more or less of the opinion that he arrived in time for the ride.

The COURT. Yes; I think we all think that.

Mr. LUSTIG. Yes; he is innocent too, your Honor. He doesn't know. He never knew what it is all about. He never seen a money box in his life.

157 The COURT. He knew there was a flimflam around currency.

Mr. LUSTIG. He never seen a print.

The COURT. You keep quiet. Reynolds, be honest with me. What did you do?

Mr. REYNOLDS. Just as Mr. Lustig testified this party was willing to give up \$500.00.

The COURT. How about the counterfeit money?

Mr. REYNOLDS. That is something I know nothing about.

The COURT. This man was to pay that because he was going to learn how to counterfeit.

Mr. REYNOLDS. I got \$150 to \$200.00 out of it.

The COURT. Do you think it is right to deal with the Government's currency?

Mr. REYNOLDS. No; I never done that before.

The COURT. Under this conviction, I could give you five times fifteen which amounts to seventy-five years. That is the ridiculous situation in your life. I have nothing like that in mine. I think you are guilty as the jury has found you, but, I think, you need to be straightened out. Any man who has not been home in fifteen years needs to be straightened out.

Mr. REYNOLDS. Oh, yes, I have been.

The COURT. You told me if I remember correctly in this 158 court you had not been home for fifteen years, or somebody said that.

Mr. REYNOLDS. My wife and I lived together for three or four years in New York, in Albany before I came here. Her apartment was rented out.

The COURT. Do you support her?

Mr. REYNOLDS. I sent her money.

Mr. LUSTIG. Yes.

The COURT. You keep out of it, Lustig. He is only in trouble because of you.

Mr. LUSTIG. I want to get him out.

The COURT. You can't get him out. You have already got him in. The jury said that. Reynolds, your case gives me concern. I don't like to impose sentence on anybody but, nevertheless, I am satisfied you need a certain amount of institutional and correctional guidance, but after that you go straight. I think I have worked out what, I think, is right. You will have to accept it whether you agree with me or not. It is the sentence of the court in the case of Thomas Edward Reynolds on indictment 3829c, that he be committed to the custody of the Attorney General of the United States or his duly authorized representative there to be placed in a proper institution for a period of one year and one day. On indictment 3875c, the court suspends the imposition of sentence on that indictment, and places you on probation for a

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period of five years, the period of probation is to start when you get out of jail on indictment 3829c. That is all.

159 United States Circuit Court of Appeals for the Third Circuit

No. 9191—October Term 1946

UNITED STATES OF AMERICA

vs.

EMIL LUSTIG, ALIAS DR. EDWARD E. FISCHER, APPELLANT

Appeal from the United States District Court for the District of New Jersey

Argued November 19, 1946

Before GOODRICH, McLAUGHLIN, and KALODNER, Circuit Judges

Opinion

(Filed February 10, 1947)

By McLAUGHLIN, Circuit Judge.

The appellant and Thomas E. Reynolds (who does not appeal) were convicted under two joint indictments based on R. S. Sec. 5430; March 4, 1909, c. 321, Sec. 150, 35 Stat. 1116; 18 U. S. C. Section 264. Counts 1 and 2 of the first indictment charge them with counterfeiting obligations of the United States. Count 3 charges possession of certain materials with intent to use them for counterfeiting. Both counts of the second indictment 160 charge possession of obligations executed in part after the similitude of obligations of the United States. Appellant was sentenced to five years on the first indictment and three years on the second with the sentences to run consecutively.

Appellant's first point is that the conviction was based on evidence obtained by illegal search and seizure.

Briefly, the facts show that a chambermaid in the Camden, New Jersey, hotel where the appellant and Reynolds were staying, became suspicious of their actions. She notified the hotel management who in turn notified the city police. As the circumstances indicated a possible violation of currency laws, the police informed Federal Agent Greene. The latter made such investigation as he could at the time and found no evidence of counterfeiting. He then went to police headquarters and so advised Detective Captain Koerner, at which Greene's official interest in the case ceased.

Koerner checked with one Sergeant Murphy regarding the appellant and Reynolds, who was registered under the name of Binstock. After that he went to the hotel himself and checked the register. Following this, based primarily on his independent recollection of Reynolds, alias Binstock, as refreshed by Sergeant Murphy, he obtained warrants for the arrest of both Lustig and Reynolds for alleged violation of a Camden ordinance requiring all criminals in the city over twenty-four hours to register with the city authorities. Accompanied by three or four other police officers, Captain Koerner went to the hotel room of Lustig and Reynolds. The latter were not in the room at the time. The police took possession of certain property in the room contained in three brief cases. This consisted of trays, pliers, bond paper, paper cut to actual size of United States currency, various small bottles with liquid in them, tweezers, what appeared to be castors wrapped in cloth, a small piece of sponge, a magnifying glass, a piece of plate glass, a ruler, a cylinder of wood with cloth wrapped around 161 it, an impression of the face of a Federal Reserve note for \$100, what appears to be the reverse side of a \$100 Federal Reserve note, and an impression of the reverse side of a \$10 certificate. Greene, who had remained at headquarters "curious to see what they would find" was telephoned by Koerner after the latter had discovered the above articles and went over to the hotel room. He looked at the various items which by that time were lying on the bed and was satisfied that something was going on concerning counterfeiting. Later Lustig and Reynolds came in and were arrested by Captain Koerner under his city warrant. Captain Koerner testified that Lustig said at the time "they were not here to pass counterfeit money. They were here to sell the idea how to make it, make an easy living." The next day Agent Greene, after consulting with the Assistant District Attorney, signed a federal complaint against Lustig and Reynolds. The indictments under consideration followed.

It is, of course, thoroughly settled law that evidence obtained through wrongful search and seizure by state officers who are co-operating with federal officials must be excluded. *Gambino vs. United States*, 275 U. S. 310, 314. So too where the search has been instigated by federal agents. *Crank vs. United States*, 8 Cir. 61 F. 2d 981. And the Fourth Amendment should be liberally construed in favor of the individual. *Boyd vs. United States*, 116 U. S. 616, 635. But mere participation in a state search by a federal officer does not render it a federal undertaking. *Byars vs. United States*, 273 U. S. 28, 32. The last cited case goes on to hold that "We do not question the right of the federal government to avail itself of evidence improperly seized by state officers operating entirely upon their own account."

The present facts do not go as far as those in the Byars decision. Here it is at least questionable from the record that there was any improper seizure by the Camden police. We do not have the benefit of the particular city ordinance 162 other than the reference to it in the testimony. The evidence shows that the Camden police identified Reynolds as a tout or race horse bookie.¹ There is no testimony as to what the conclusion as to Lustig then was, but Lustig on the stand admitted to at least one prior conviction, to a great number of arrests and that he was under bail in New York at the time. Reynolds did not testify. There is nothing in the record to show what happened to the complaint under the municipal ordinance.

The controlling decision in this Circuit is Miller vs. United States, 50 F. 2d 505. That case follows the general principles above outlined. The alleged illegal seizure and search concerned an automobile truck loaded with beer. We said, page 507:

"No federal official was present when the state troopers seized the truck. There is no evidence that while federal officers were watching the brewery and state officers were watching the Tallow Factory there was any contact, relation or co-operation between the two forces. Nor is there evidence that when later the state troopers made the search, seizure and arrest there was any co-operation between the two sets of officials. So far as the record shows, each was acting independently of the other all the time. True, the government accepted the benefits of the alleged unlawful search and seizure by accepting the truck and its contents when the troopers delivered them at the government warehouse and by using in evidence the property seized, as it could lawfully do unless the state troopers were acting on its behalf. On this point the state troopers testified that they thought they were enforcing the National Prohibition Law (27 U. S. C. A.). But this was merely their personal opinion which alone cannot give a federal character to their action, particularly in view of the fact that

163 Pennsylvania has a state liquor law of its own to be enforced and that the State Constabulary ordered the troopers to this task without any instructions to enforce the federal law. From this evidence we cannot find that the search, seizure and arrest by the State troopers, if unlawful for lack of a warrant and probable cause, were made solely on behalf of the United States or in co-operation with officials of the United States within the meaning of the Gambino decision."

From the facts we think it a reasonable conclusion that the search of appellant's room was in truth a proceeding by the state

¹ Sergeant Murphy testified that he told Captain Koerner, "Well, it doesn't seem possible for men in the counterfeiters' racket, counterfeiting money would be in a public hotel. I said, 'That looks like as there was, and it was possible, that they might be trying to counterfeit race track tickets.' "

rather than an undertaking of Federal Agent Greene to obtain evidence in a manner forbidden by the federal law while at the same time avoiding the consequences by cooperation with the Camden police. There is no evidence of prearrangement or understanding between Greene and Captain Koerner in the obtaining by the latter of the city warrant and his subsequent search of appellant's room. Greene had frankly advised Koerner that he had found no evidence of counterfeiting. From then on the Camden police executive acted on his own initiative. It is true that Greene took advantage of the results, but, as we see it, in legitimate fashion and within the bounds of the cases covering the subject. See also Sloane vs. United States, 10 Cir., 47 F. 2d 889; Milburne vs. United States, 2 Cir., 77 F. 2d 310.

Appellant then argues regarding counts one and two of the first indictment that the evidence proffered to prove the printing of the notes was purely circumstantial, was insufficient and therefore that the Court should have directed a verdict of acquittal on those counts. The chambermaid in the room adjoining that of appellant heard a noise, like glass hitting against glass or metal hitting against metal. As a result she looked through the keyhole of a door entering in Lustig's room. She saw him holding a piece of wet green paper which he tore, giving a piece to Reynolds. It

looked like money to her. Then appellant got out a little
164 glass bottle and a little paint brush and laid them down.

Then she saw a magnifying glass. She heard one of the men say, "That is enough of them, that is enough of them." Captain Koerner testified that counterfeit money could be made with the equipment he found. An ink expert testified that with phenol, which was among the items found in the room, impressions could be transferred from one paper to another. The impressions of the \$100 bills and of the \$10 bill above referred to were found in appellant's bag. Lustig, according to Captain Koerner, said that "We are here to make counterfeit money." Clearly the evidence indicated that the jury should pass upon it and just as clearly it supports the verdict upon those particular counts.

Appellant next urges that count three of the first indictment does not state an offense under 18 U. S. C. A. Section 264. The relevant portion of the statute reads:

"* * * or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof."

It is claimed that none of the articles found in the hotel room come within the requirements of that part of the above language which speaks of possession of "any plate, stone or other thing." Erickson, Koerner, and Greene gave evidence to the effect that the reverse impressions on the paper found in Lustig's room could be transferred to fresh paper in the position which they originally occupied upon genuine currency. Neither Koerner or Greene pretended to know the technical details of such process. Mr. Erickson outlined that process at some length. Admittedly, the United States does not print its obligations by such crude methods. And the interpretation of the statutory "other things" refers to things of the same kind. *United States vs. Phez Co.*, 9 Cir., 28 F. 165 2d 106. Nor can the Court extend that genus in a criminal case. *United States vs. Resnick*, 299 U. S. 207.

But here the intent of the statute fairly includes all devices by which counterfeit currency may be made. The employment of the terms "plate" and "stone" does not imply that "other things" must be metallic or heavy or elaborate. It means the other things must be capable of the same use. The paper impressions here were testified to as being so capable and the jury accepted that evidence. Whether these impressions could be used to make many counterfeit bills is irrelevant; to make one brings the maker within the express prohibition of the statute.

The offenses charged in the second indictment stem out of that part of Section 264 which reads:

"* * * or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or *in part*, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; * * * shall be fined not more than \$5,000., or imprisoned not more than 15 years, or both. (R. S. Sec. 5430; Mar. 4, 1909, c. 321, Sec. 150, 35 Stat. 1116)"
[Italics supplied.]

Appellant asserts that the government failed to prove possession of an obligation made and executed "in part" after the similitude of an obligation of the United States. The government evidence on this consisted of the three impressions which have been mentioned. All three were reverse impressions. The first was of the face of a \$100 bill; the second of the back of a \$100 bill and the third of the back of a \$10 bill. It is argued that the offense outlined by the statute contemplates possession of a completely executed obligation similar to an obligation of the United States.

Appellant concedes that the proper test to be applied is 166 whether the fraudulent obligation bears such a likeness or resemblance to any of the genuine obligations or securities

issued under the authority of the United States as is calculated to deceive an honest, sensible and unsuspecting person of ordinary observation and care when dealing with a person supposed to be upright and honest. This is sound and the sense of the decisions on the point. *United States vs. Weber*, 210 F. 973, 976; *Minnella vs. United States*, 8 Cir., 44 F. 2d 48, 49.

This question was developed very thoroughly by the defense on cross-examination of Federal Agent Greene. The latter said he had been such agent since 1933 and had handled counterfeiting cases since that time, the particularly heavy period for such matters having been from 1933 to 1937. For about five years he was part of a special federal education program, giving lectures to bankers and others in connection with how counterfeit money is made, how it is sold, how it is devised and how it is detected. He said that the three impressions were reasonable facsimiles of the bills which they were intended to imitate. He further said that the impressions are such a likeness or resemblance to United States currency as to be calculated to deceive an honest, sensible and unsuspecting man of ordinary care and observation.²

167 In addition to this testimony brought out by the defense, the three impressions had been received in evidence without objection by the defense on this phase of the matter. Nor was there any motion or request to charge in connection with this particular question. Defendant suggests that the Trial Court should have set the verdict aside with reference to the second indictment as against the weight of the evidence. Tested by the rule outlined by the defendant, we think that whether the three impressions were in whole after the similitude of any obligation of the United States was peculiarly a jury question under the facts of this case.

We have carefully examined the other contentions of the appellant and find them without merit.

Affirmed.

² In explaining his reasons for his opinion this witness stated that: "According to our experience with Secret Service, I have obtained from business men a split ten dollar bill, that is the back of a ten dollar bill that was passed in this manner, it would be folded, you understand. A man could sit in a car and order a dollar's worth of gas, and after the materials had been delivered to the car and the change given before the gas station attendant could see the ten dollar bill."

"This man held the ten dollar bill. He held it folded so the gas station attendant saw the numeral ten, the gas station attendant handed out nine dollars, the passer took it, and the car left, and by the time the gas station attendant unfolded the bill, the car was gone. That was one type of them. We had a number of instances. Another, we have received from victims play money. You have heard of United States stage money, the exact size of genuine money. Whenever we run across that we confiscate it. Play money looks like real money because it is the actual size and color of it. In the light of those circumstances, I would say yes to Mr. Auerbach's question."

[Title omitted.]

Order amending opinion

And now, to wit, this 11th day of February 1947,

It is ordered that the printed opinion filed herein on February 10, 1947, be and the same is hereby amended as follows:

By inserting at the end of the ninth line on page 9 after the word "whole," the phrase "or in part."

For the Court,

MC LAUGHLIN,
United States Circuit Judge.

169 In the United States Circuit Court of Appeals for the
Third Circuit

No. 9191—October Term, 1946

UNITED STATES OF AMERICA

vs.

EMIL LUSTIG, ALIAS DR. EDWARD E. FISCHER, APPELLANT

Present: GOODRICH, MC LAUGHLIN, and KALODNER, Circuit
Judges.

On appeal from the District Court of the United States, for the
District of New Jersey.

Judgment

Filed February 11, 1947

This cause came on to be heard on the transcript of record from
the District Court of the United States, for the District of
New Jersey, and was argued by counsel.

On Consideration whereof, it is now here ordered and adjudged
by this Court that the judgment of the said District Court in this
case be, and the same is hereby affirmed.

By the Court,

MC LAUGHLIN, *Circuit Judge.*

[File endorsement omitted.]

171 Petition for rehearing covering 11 pages filed March 3, 1947, omitted from this print.

It was denied, and nothing more by order March 21, 1947.

172 United States Circuit Court of Appeals

[Title omitted.]

Order denying rehearing

Filed March 21, 1947

Present: GOODRICH, McLAUGHLIN, and KALODNER, Circuit Judges.

The petition for rehearing in this case is denied.

By the Court,

GERALD McLAUGHLIN, *Circuit Judge.*

MARCH 21, 1947.

[File endorsement omitted.]

173 [Clerk's certificate to foregoing transcript omitted in printing.]

174 Supreme Court of the United States

No. 1389—October Term, 1946

EMIL LUSTIG, PETITIONER

vs.

THE UNITED STATES OF AMERICA

Order extending time within which to file petition for certiorari

April 19, 1947

Upon consideration of the application of the petitioner,

It is ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 19, 1947, provided that final judgment has been entered within thirty days preceding this date, the date of final judgment not appearing in said application.

HAROLD H. BURTON,
*Associate Justice of the Supreme
Court of the United States.*

110 EMIL LUSTIG, ALIAS DR. EDW. E. FISHER VS. UNITED STATES

175 Supreme Court of the United States

No. 1389—October Term, 1948

EMIL LUSTIG, ALIAS DR. EDWARD E. FISHER, PETITIONER
vs.
THE UNITED STATES OF AMERICA

Order allowing certiorari

Filed February 16, 1948

The petition received from petitioner on July 5, 1947, as supplemented by his petition received January 28, 1948, is treated as a petition for rehearing and rehearing is granted. The order of this Court entered June 16, 1947, denying certiorari is vacated and the petition for writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.